2673
1
464

Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

Vol. IX—Part II.

LIBRARY.

Published by Authority of the Council.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT PRESS.

1877.

ERRATA.

At the foot of page 12 insert the following —

"By subsequent order of the President the Council was further adjourned to Saturday, the 29th January 1876."

In page 178, for the first paragraph under the head of "Rent disputes" read—

"The Hon'ble Mr Dampier moved that the report of the Select Committee on the Bill to provide for enquiry into disputes regarding land and to prevent agrarian disturbances be taken into consideration in order to the settlement of the clauses of the Bill"

In page 190, at the top, substitute "Thursday" for "Saturday."

INDEX TO VOL. IX.

PAGE.

A

ADJOURNMENT OF COUNCIL *See* COUNCIL

ADVOCATE-GENERAL. THE HON'BLE G. C. PAUL, ACTING—(took his seat 2nd January 1875.)

Estates Partition Bill 223
Municipalities (Bengal) Bill 45, 47, 48, 49, 52, 53, 54, 55, 58, 64, 84, 85, 86, 88
Municipality (Calcutta) Bill 19, 72, 75
Possessory Titles (Landed Estates) Registration Bill ... 8, 212, 233, 245, 246
Rent Disputes Settlement Bill 179, 181, 184, 186, 226, 238

ABKARRE LAWS CONSOLIDATION BILL

Motion for leave to introduce 279
Read in Council 287
Referred to Select Committee 289

ASHGHAR ALI THE HON'BLE NAWAB SYED—(took his seat 23rd January 1875.)

Municipalities (Bengal) Bill .. 95, 99, 100, 101, 108
Municipality (Calcutta) Bill 147

B.

BELL THE HON'BLE H.—(took his seat 11th December 1875.)

Ferries Bill ... 282, 290, 291, 299
Ghatwali Police Bill... . . . 273, 291, 294
Jute Warehouses Registration and Fire-brigade Bill ... 297, 298
Municipalities (Bengal) Bill 46, 49, 53, 56, 57, 64, 81, 84, 85, 87, 91, 96, 97, 98, 99, 100, 103, 106, 109, 159, 177
Municipality (Calcutta) Bill 20, 28, 30, 73, 111, 112, 113, 114, 115, 116, 132, 138, 142, 146
Possessory Titles (Landed Estates) Registration Bill 11, 205, 211, 240, 243, 245, 253
Rent Disputes Settlement Bill 127 162, 171, 180, 183, 228, 237, 238, 239

BUTWARRAHS. *See* Estates Partition Bill.

BROOKES. THE HON'BLE T. W.—(took his seat 19th December 1874.)

Municipality (Calcutta) Bill ... 14, 148, 174

BROWN. THE HON'BLE H. F.—(took his seat 9th December 1876.) ... ...

BANKOORA. Ghatwali Police in—

See Ghatwali Police Bill . . . ...

INDEX.

PAGE.

C

CALCUTTA MUNICIPALITY
See Municipality (Calcutta) Bill

CHOTA NAGPORE. Amendment of the Rent Law in—
See Rent Law

COUNCIL ADJOURNMENT OF—
Sine die . . 32, 248, 251, 255, 259, 281, 295, 299

COUNCIL DIVISIONS OF THE—
On certain resolutions moved by the Hon'ble Baboo Kristodas Pal in Municipalities (Calcutta) Bill ... 145
On motion to substitute in same Bill one-fourth for one-third as the proportion of Commissioners to be appointed by Government 148
On motion to substitute new section for section 146 of Municipalities (Bengal) Bill 153
On certain amendments in section 234 of same Bill . 159
On motion to omit sections 249 to 255 of same Bill 163
,, to introduce new section after section 357 of same Bill 172
,, to substitute the schedule annexed to Act III of 1864 for the schedule in the same Bill .. . 172
On motion to pass the Municipality (Calcutta) Bill .. 175
,, to insert new section after section 14 of Rent Disputes Settlement Bill 189
,, to omit clause (*c*) of section 47 of Estates Partition Bill 192
,, that the Municipalities (Bengal) Bill be passed 213
,, to substitute new sections for sections 74, 77, and 78 of Possessory Titles (Landed Estates) Registration Bill 234

COURT OF WARDS' ACT AMENDMENT BILL
Motion for leave to introduce 277
Read in Council ... 283
Referred to Select Committee 287

COURSE OF LEGISLATION *See* Statement of the—

D

DAMPIER THE HON'BLE H. L.—(took his seat 23rd March 1875.)
Estates Partition Bill 119, 151, 191, 192, 194, 199, 208, 212, 221, 223
Municipalities (Bengal) Bill 40, 41, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 81, 82, 83, 84, 85, 88, 90, 91, 92, 93, 95, 96, 97, 98, 99, 101, 103, 104, 107, 109, 119, 152, 153, 154, 156, 157, 158, 159, 161, 162, 163, 164, 166, 167, 168, 169, 176, 177, 195, 197, 216, 220
Municipality (Calcutta) Bill 20, 22, 116, 118, 136, 147
Possessory Titles (Landed Estates) Registration Bill 2, 11, 32, 39, 229, 232, 235
Rent Disputes Settlement Bill .. 123, 185, 186, 227

DIVISIONS OF THE COUNCIL.
See Council, divisions of—

E.

ESTATES PARTITION BILL
Report of Select Committee presented 119
Settlement of clauses 190, 198, 221
Division of Council on motion to omit clause (*c*) of section 47 ... 192

PAGE.

ESTATES PARTITION BILL—(*Continued*)
Bill passed 224
Re-introduced 256
Read in Council and passed after suspension of rules ... 258

ESTATES, REGISTRATION OF—
See Possessory Titles (Landed Estates) Registration Bill

F.

FERRIES BILL.
Motion for leave to introduce . . . 282
Read in Council 290
Referred to Select Committee . 291
Time for presentation of report extended 299

FIRE-BRIGADE.
See Jute Warehouses

G

GHATWALI POLICE (BANKOORA AND MANBHOOM) BILL.
Motion for leave to bring in *postponed* . 119
,, to introduce 273
Read in Council .. 291
Referred to Select Committee .. . 295

H

HOGG, THE HON'BLE SIR STUART—(took his seat 1st April 1876)
Municipalities (Bengal) Bill 51, 52, 57, 60, 62, 63, 65, 72, 82, 83, 92, 94, 99, 105, 106, 149, 150, 151, 152, 158, 159, 160, 162, 177, 196, 197
Municipality (Calcutta) Bill 13, 17, 18, 20, 22, 26, 28, 30, 41, 42, 43, 44, 45, 110, 111, 113, 114, 115, 116, 118, 129, 130, 131, 132, 133, 135, 136, 137, 147, 173, 175

J

JUGGADANAND MOOKERJEE.
See Mookerjee, the Hon'ble Baboo Juggadanund—

JUTE WAREHOUSES REGISTRATION AND FIRE-BRIGADE BILL.
Leave to introduce . . 297
Read in Council 298
Passed after suspension of rules . 299

K

KRISTODAS PAL.
See Pal, the Hon'ble Baboo Kristodas—

M.

MANBHOOM. Ghatwali Police in—
See Ghatwali Police Bill.

MARKET-DUES AND RIVER TOLLS BILL.
Leave to introduce 296

MEER MAHOMED ALI. THE HON'BLE MOULVIE—(took his seat 19th February 1876).
Municipalities (Bengal) Bill 92, 107

INDEX.

PAGE.

MEMBERS (*New*).

The Hon'ble H. F. Brown—(took his seat 9th December 1876).
The Hon'ble Moulvie Meer Mahomed Ali—(took his seat 19th February 1876).
The Hon'ble Baboo Issur Chunder Mitter—(took his seat 8th April 1876).
The Hon'ble Baboo Kristodas Pal—(took his seat 25th November 1876).
The Hon'ble G. Parbury—(took his seat 25th November 1876).
The Hon'ble V. H. Schalch, C. S. I.,—(took his seat 25th March 1876).
The Hon'ble Baboo Ramshunker Sen—(took his seat 12th February 1876).

MITTER THE HON'BLE BABOO ISSUR CHUNDER—(took his seat 8th April 1876).

Ferries Bill 291

MOOKERJEE THE HON'BLE BABOO JUGGADANUND—(took his seat 11th April 1874).

Municipalities (Bengal) Bill .. 50, 58, 62, 83, 86, 91, 94, 150, 157, 196
Municipality (Calcutta) Bill ... 147, 175
Rent Disputes Settlement Bill 189

MUNICIPALITY (CALCUTTA) BILL—

Consideration of report of Select Committee relating to the constitution of the Municipality .. 13
Further settlement of clauses 41, 110, 130
Recommitted for the purpose of reconsidering sections 21, 22, and 58, relating to Government control 65
The Advocate-General, Mr Dampier, and Mr. Bell added to the Select Committee 80
Report of Select Committee on sections relating to Government control presented and adopted .. . 129
Division of the Council on certain resolutions moved by the Hon'ble Baboo Kristodas Pal . 145
Division of the Council on motion to substitute one-fourth for one-third as the proportion of Commissioners to be appointed by Government ... 148
As amended ordered to be published in the Gazette .. *ib*
Passed after division 173

MUNICIPALITIES (BENGAL) BILL.

Report of Select Committee presented and ordered to be published . 40
Settlement of clauses 45, 80, 89, 149, 161, 175
Further considered . 195, 213
Division of Council on motion to amend section 62 . 85
" " " to substitute new section for section 146 ... 153
" " on certain amendments in section 234 159
" " on motion to omit sections 249 to 255 . 163
" " " to introduce new section after section 357 .. 172
" " " to substitute the schedule annexed to Act III of 1864 for the schedule in the Bill . 172
As amended ordered to be published in the Gazette 178
Division of Council on motion that the Bill be passed 221
Bill passed ... ... *ib.*

N.

NEW MEMBERS.

See Members.

INDEX.

PAGE.

P.

PAL. THE HON'BLE BABOO KRISTODAS—(took his seat 9th January 1875)

Abkaree Laws Amendment Bill 288
Court of Wards' Act Amendment Bill 284
Estates Partition Bill ... 122, 191, 194, 222, 259
Ferries Bill 291
Ghatwali Police Bill 293
Municipalities (Bengal) Bill—50, 53, 54, 55, 56, 58, 59, 60, 61, 62, 64, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 149, 151, 153, 155, 156, 157, 158, 160, 161, 162, 163, 164, 166, 167, 168, 171, 172, 175, 177, 196, 197, 216
Municipality (Calcutta) Bill 15, 17, 19, 20, 23, 27, 29, 31, 41, 43, 44, 66, 80, 112, 114, 115, 116, 130, 134, 137, 138, 143, 148, 174
Possessory Titles (Landed Estates) Registration Bill 9, 11, 37, 207, 211, 231, 235, 242, 243, 246
Rent Disputes Settlement Bill 124, 178, 185, 186, 224

PARTITION OF ESTATES—

See Estates Partition Bill.

PAUL. THE HON'BLE C. C.—(took his seat 2nd January 1875)

See Advocate-General.

POSSESSORY TITLES (LANDED ESTATES) REGISTRATION BILL

Read in Council . .. 2
Referred to a Select Committee with instructions to report in a fortnight . 12
Report of Select Committee presented 32
Settlement of clauses under suspension of rules 39
To be republished as provisionally settled and reconsidered by Select Committee 40
Division of the Council on motion to substitute new sections for sections 74, 77, and 78, 234
Further report considered and clauses settled .. 199, 228, 240
Bill passed 248
Re-introduced 253
Read in Council and passed after suspension of rules .. 255

PUBLIC FERRIES

See Ferries.

PARBURY. THE HON'BLE G.—(took his seat 25th November 1876).

PRESIDENT (THE HON'BLE SIR RICHARD TEMPLE, BART., K.C.S.I., LIEUTENANT-GOVERNOR)—

Municipalities (Bengal) Bill 52, 57, 59, 64, 82, 84, 87, 91, 92, 94, 96, 99, 104 109, 150, 214
Municipality (Calcutta) Bill 16, 18, 19, 28, 31, 72, 78, 80, 115, 116, 118, 130, 144, 145, 146, 148
On retirement of the Hon'ble Mr. Dampier 236
Possessory Titles (Landed Estates) Registration Bill ... 11, 234, 247
Rent Disputes Settlement Bill ... 128, 178, 182, 186, 187, 188, 227
Rent Law Amendment Bill 299
Statement of the course of legislation 1, 248

PAGE.

R.

RAMSHUNKER SEN. THE HON'BLE BABOO—
See Sen.

REGISTRATION OF ESTATES.
See Possessory Titles.

RENT DISPUTES SETTLEMENT BILL
Members added to Select Committee 80
Report of Select Committee presented 123
Statement of clauses 178
Division of the Council on motion to insert new section after section 14 ... 189
Further considered 224, 237
Bill passed . 240

RENT LAW AMENDMENT BILL
Leave to bring in 279
Statement regarding delay in proceeding with the Bill 299

RENT LAW (CHOTA NAGPORE) AMENDMENT BILL.
Motion for leave to introduce 281

REVENUE LAWS CONSOLIDATION BILL
Motion for leave to introduce 281

REYNOLDS THE HON'BLE H. J.—(took his seat 30th January 1875.)
Abkaree Laws Consolidation Bill ... 279, 287, 289
Estates Partition Bill . . 255, 258, 259
Market-dues and River Tolls Bill .. 295
Municipalities (Bengal) Bill 63
Municipality (Calcutta) Bill .. 118, 148
Possessory Titles (Landed Estates) Registration Bill 201, 207, 210, 247
Rent Disputes Settlement Bill ... 188
Rent Law (Chota Nagpore) Amendment Bill 281
Rent Law Amendment Bill 271
Revenue Laws Consolidation Bill . 280

RIVER TOLLS.
See Market-dues Bill

RULES OF THE COUNCIL. SUSPENSION OF—
Estates Partition Bill . 258
Jute Warehouses Registration and Fire-brigade Bill .. 299
Possessory Titles (Landed Estates) Registration Bill .. 36, 255

S.

SCHALCH. THE HON'BLE V. H.—(took his seat 25th March 1876.)
Court of Wards' Act Amendment Bill . . 277, 283, 287
Possessory Titles (Landed Estates) Registration Bill 8

SEN THE HON'BLE BABOO RAMSHUNKER—(took his seat 12th February 1876.)
Municipalities (Bengal) Bill 85, 88, 92, 99, 197, 221
Municipality (Calcutta) Bill 136, 137, 147

STATEMENT OF THE COURSE OF LEGISLATION.
The President 1, 248, 260

T.

TEMPLE. THE HON'BLE SIR RICHARD, BART., K.C.S.I. (LIEUTENANT-GOVERNOR)—
See President.

W.

WARDS.
See Court of Wards.

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 15th January 1876.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble Sir Stuart Hogg, Kt.,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
The Hon'ble Baboo Kristodas Pal,
and
The Hon'ble Nawab Syed Ashgar Ali Diler Jung, C.S.I.

His Honor the President said, before calling upon the Hon'ble Mr. Dampier to speak to the motion which stands in his name, I would just like to mention that there are three very important Bills which have been before the Council for a considerable time. The first of these is the Bill which will be brought forward to-day, relating to the registration of possessory titles in revenue-paying estates and revenue-free lands; the next is the Bill for the consolidation of the law regarding Municipalities; and the third is the Bill to make better provision for the partition of estates paying revenue to Government. There is every hope that these three Bills may, with the co-operation of the members, be passed in a reasonable time, provided nothing occurs to prevent their being speedily settled in committee, and hon'ble members on the Select Committees will be good enough to attend as regularly as possible, even at some sacrifice of their valuable time and inconvenience to themselves. I am confident that so much devotion to the public interests has been shown by hon'ble members both in their collective capacity and as individuals, that they will be good enough to give up a sufficient portion of their time and attention to these important questions to enable these measures to be speedily advanced to their final stage.

There is one other important Bill before the Council, viz. the Bill relating to the municipality of the capital city of Calcutta. I am happy to say that since the termination of the holidays, the Select Committee has given close attention to the important matter of constitutional change in the Municipality, and the principle of elective representation, and I believe they have so far advanced with the work that their report may be ready by the middle of next week; and if that should be the case, I propose that we take up the report of the Select Committee on the constitution of the Municipality at the next meeting of the Council, this day week. In that case we may hope that progress will be made with speed, as well as the deliberation due to the interests of the many classes of the public who feel an interest in the question.

I now call upon the Hon'ble Mr. Dampier to speak to the motion in his name.

REGISTRATION OF POSSESSORY TITLES.

The HON'BLE MR. DAMPIER said in January last he laid before the Council the reasons which led the Government to propose the passing of a measure for enforcing the compulsory registration of possessory titles. He mentioned that the existing law of 1793 and 1800 required such registration, but that the requirements of the law had been very laxly enforced, and that the means provided for enforcing it were so cumbrous as to be practically inoperative. The tendency of recent legislation had been, while insisting on the performance of certain duties and the fulfilment of certain obligations by the holders of land, to promote the security of landed proprietors by providing that whether for the enforcement of penalties on failure to fulfil such obligations, or for the realization of other State demands, process should be taken, in the first instance, against defaulting landholders individually, and not against the estate to the possession of which the obligation attached; recourse being had to the sale of landed property in the last resort only. Act VII of 1868 of this Council exemplified the tendency of recent legislation to be in this direction. But in the absence of complete and correct registration of the names of the persons in possession of land as proprietors, it was often most difficult, and sometimes impossible, to identify the individuals on whom the law imposed the obligation which it was sought to enforce. On these considerations the Council accepted the necessity of practically enforcing the registration of the possession of landed property, which the existing law indeed required, but was ineffectual to secure. Since MR. DAMPIER had asked leave to introduce the Bill, the time of the Council had been taken up by other important measures; but he had had the advantage of consulting on the subject the most experienced revenue officers who were concerned in the administration of the districts, and with the help of their suggestions and criticisms, he had framed the Bill which he had the honor to lay before the Council.

The existing old Regulations contained provisions prescribing the form of registers which should be prepared, and the manner in which they should be kept up. Those provisions were scattered over many of the old Regulations; their requirements were in such detail, and so minute, that it had been impossible

to work them to any useful purpose. The present opportunity had therefore been taken to repeal the portions of the Regulations which touched on this subject, and to re-enact so much of them as would now be of use in a compact form more adapted to present requirements.

It might be thought that the second and third Parts of the Bill as laid before the Council contained much which might have been left to be provided for by instructions issued by the Executive Government for the guidance of its officers; and it was a fair matter for consideration whether the Bill need be so much in detail in regard to the preparation of registers.

In preparing the Bill, MR. DAMPIER had thought it best to follow the model of the old Regulations in this respect, instead of wiping out all trace of them from the statute book of Bengal, and merely providing that the Board should prescribe the forms of registers; and he was inclined to think that this domesday book, so to call it, would be of such importance to the public, that it was desirable to lay down the lines for the guidance of the Executive with more distinctness and precision than was ordinarily necessary.

Section 4 prescribed four registers which the Collector should keep—the general register of revenue-paying lands, the general register of revenue-free lands, a mouzahwar register of all lands revenue-paying and revenue-free, and an intermediate register of changes affecting entries in the general and mouzahwar registers. Every one of these registers was a counterpart of a corresponding register now kept up, or which it was now professed to keep up, and in regard to which there was more or less diversity in different districts. As to the general register of revenue-paying lands, it was divided into two parts, of the first of which he need say nothing, for it was the actual counterpart of existing general registers of estates borne on the towjee. But the second register was new. It provided for a systematic registry of lands lying in the district of one Collector, but belonging to an estate borne on the towjee of another district. The preparation of this register would cause much trouble. But in the administration of the Revenue Department officers were always coming upon difficulties caused by the want of such a register. Collectors had no formal collated record of information regarding the lands lying in their own districts, if those lands formed part of estates borne on the revenue-roll of the Collectors of other districts.

From the 6th section onwards were particulars of what the general registers of revenue-paying lands should contain. Of these particulars it was only necessary to draw the attention of the Council to two. He had introduced a provision requiring that under each estate should be entered all tenures within it which had been registered under the protective clauses of Act XI of 1859, whether such tenures were specially or ordinarily registered; whether they were protected against the Government or only against other parties. It had been suggested that the registration of these particulars would bring useful information into a convenient and accessible form. MR. DAMPIER had some doubts as to whether it would be proper to show these particulars in the register, for it seemed to him dangerous to do anything which might delude intending purchasers into the belief that if they consulted this register, they

were safe against the existence of incumbrances and adverse titles in estates which they wished to buy. Such was not the object of this register.

The second point was a provision that the names of mortgagees should be registered. Of this he should speak more fully when he came to the substantive section of the Bill on the subject.

Section 9 was a new section, and a very important one. The Council were aware that irrespectively of revenue-free lands held on titles which had been declared valid by competent courts and authorities, many districts were studded with plots of land held without payment of rent to any one, but which had never been authoritatively pronounced exempt from the payment of revenue. These (under the name of *miliks*, for instance, in Purneah) were to be counted in thousands. It was impossible to admit these on the registers as recognized revenue-free lands; and it was not desired to arouse the litigation which would be caused by forcing the rent-free holders to prove their titles to hold rent-free or revenue-free; but for the purposes of general administration it was necessary to hold some person liable in respect of such plots of land to the obligations which the laws imposed upon landholders; and to secure this object the Bill followed the example of the Embankment and Road Cess Acts, and empowered the revenue authorities to attach such plots of land in his registers to any adjoining estate for the purposes of the Act only. Such registration carried with it no rights of any sort, except such as were essential for the purposes of the Act. The obligation imposed on the holder of the estate to which such a plot was attached would then be to perform all duties in respect of such a plot as he would have to perform in regard to any land for which he received rent on his estate.

Register B was the register of revenue-free titles. This had been the subject of much enquiry; and the result was that the attempt to keep up the register now called C, the register of lakhiraj lands, had led to the most confused and diverse practice in different districts. In some districts those lands only were admitted to registration of which the titles had been pronounced valid by a competent court. In other districts every one who could show that he held land free of rent had been admitted to registry; every where the registers were admittedly imperfect, and admittedly it was almost impossible to bring them near perfection.

The Bill provided for the admission to this register, first, of lakhiraj tenures, of which the titles had been pronounced valid by a competent court:

And secondly, of those tenures of which the Government in recent times had conferred titles revenue-free; such as lands sold with a revenue-free title, and those of which the revenue had been redeemed by payment of a capitalized sum;

And thirdly, a discretion was given to the Board of Revenue to admit on the register any other lands as revenue-free; the intention of which was that even where a lakhiraj title had not been declared valid by a competent court, if the Board were satisfied that the title was one which, with due regard to the public interests, might be admitted to be revenue-free, they might order such land to be recognized as revenue-free land by entry on this general register B.

The second and third parts of this general register of revenue-free lands were new, but they merely brought into the system of registers prescribed by this Act lands which were already recorded in books prescribed by the Board. It was necessary to provide for the inclusion of such lands in the registers prescribed by this Bill in order to attain the object of the Bill, which was to provide registers which should account for every acre of land in a district.

The mouzahwar register was prescribed in section 21 and the following sections. Such a register already existed. But the difference introduced by the Bill was this. Mouzahs were now registered according to pergunnahs. It had been suggested by more than one officer, and notably by Mr. Kemble of Purneah, that this mode of classification was now useless for any practical purpose. The pergunnah had ceased to be a unit for any practical purpose. It might consist of patches of land situated here and there, and surrounded by lands of other pergunnahs. The suggestion was that the mouzahwar register should be so prepared as to be useful for all purposes of general administration; for police and census purposes, for instance, as well as revenue and fiscal purposes. This seemed to be a practical suggestion. But there was one difficulty. The pergunnah was an established unit of which the Government did not change or alter the limits; whereas the jurisdictions of thanas, as would be seen from the Gazettes, were constantly being extended or reduced, or changed, and it would certainly cause much inconvenience if the jurisdictions of thanas were changed immediately after a mouzahwar register had been prepared under this Act, classified according to thana jurisdictions.

MR. DAMPIER had thought it would be best that the Bill should leave the arrangement of the mouzahwar register elastic, to be adapted to circumstances by the Executive. The Bill therefore provided that mouzahs should be arranged, not according to pergunnahs, but according to the local divisions of any district; and a "local division" was defined to mean any local division, whether a pergunnah, thana, or any other which the Board of Revenue might prescribe for the district. So that in any district in which the revisions of thana boundaries had been concluded, the Board presumably would prescribe that the preparation of these mouzahwar registers should be according to police jurisdictions. And if the district were one in which those arrangements were in a "fluid state," they would presumably prescribe that the mouzahwar register should be arranged according to pergunnahs or some other unit.

Of the intermediate registers MR. DAMPIER need not say much. They were the counterpart of what the present Regulations provided.

Sections 28 to 42 provided for the preparation, re-writing, and custody of the registers, and mainly followed the existing rules. Perhaps the Select Committee might think that a good deal of the details might be omitted from this Part, and left to be provided for by executive rules.

Part III related to the sources of information from which the registers should be kept up. It followed the existing law, or rather several existing laws. The Bill provided in section 43 for four main sources of information of changes, to enable the Collector to keep up the registers correctly. It provided, first, that the civil courts should give notice of its decrees or orders which caused

such changes; secondly, that registrars should give information of the registration of documents which effected such changes; thirdly, where parties came into possession of lands by transfer or succession, they were bound to give notice of such acquisition or possession; and fourthly, landholders were bound to give notice of the creation of new villages on their estates.

Part IV related to the registration and mutation of names of proprietors. It imposed the obligation to register on four classes of persons—first, on all persons who held proprietary possession, which by the definitions would include lessees of estates held directly from the Collector: they were bound to register within six months of the passing of the Act. Secondly, on every person who succeeded to such right, within six months of his succession; thirdly, on managers under the Collector or the Court of Wards or a court of justice, who must register within three months of their appointment or of the passing of the Act; and fourthly, any person who was registered as a proprietor, who might transfer his right, was required to give notice to the Collector of such transfer. These were the obligatory provisions; and there was a section 51 which was permissive only, and enabled a mortgagee to apply for registration of his name as a mortgagee. This provision was new, and introduced as the outcome of a discussion which had lately taken place as to relaxing the rigor of the Sale Law. After making inquiries and consulting the landed interest, the Government had come to the conclusion that stringent as the Sale Laws were, they invested revenue officers with ample discretion to work them without inflicting unnecessary hardship; and that in practice that discretion was so largely used by Collectors, and enforced by the controlling revenue authorities, that little reason was left to complain. If Mr. Dampier had rightly understood the conclusions to which the Government had come, he must say that he was well satisfied with them. It could not be denied that the Bengal sunset law, as it was called, which empowered a Collector to sell up an estate on which the smallest amount of land revenue remained unpaid on a certain hour of a certain day, had, when read alone, the appearance of being an extraordinarily arbitrary, severe, and Draconic law; and in this light it might strike any one until he came to examine the working of the law. When he did so, he found that the law gave revenue officers ample powers to receive a payment of arrears which was tendered after the fixed date, and to put off the sale of the estate; and that in practice the Collectors, so to say, caught at any good excuse for not selling up an estate which was in default. Not only did they do so from their own good sense and desire to avoid severity, but they knew that this was the policy which the Government and the controlling authorities desired to enforce; and every Collector was aware that in any case in which an estate was sold for default (otherwise than because the owners chose to let it be sold), the onus would eventually be thrown on him personally of justifying his recourse to sale; and he would be put to the proof that the circumstances of the default were such that he could not reasonably have held his hand from sale. On the other hand, those who had experience of district administration knew well that there were extreme cases of repeated default from incorrigible mismanagement of his affairs by a proprietor, or in consequence of irreconcileable disputes among

co-proprietors, against which liability to sale was the only efficient check; and in such cases it was often really for the benefit of the tenantry on the estate, and for the general good of all except the defaulters, that the estate should pass into better hands and management. He had taken leave to digress so far from the subject of the Bill in hand as to make these remarks, because, as he understood, no Bill would now be brought forward for the amendment of the Sale Law. The Government had found that they could, by executive orders, give all that the landed interest could reasonably ask, and that the only legislation required was to give a mortgagee a right to have his name registered. This right was given by the Bill now before the Council, and the Government had pledged itself to take care that notice should be given to every mortgagee whose interest might be affected before an estate was sold for default of payment of revenue.

The rest of the Chapter, sections 53 to 66, provided the procedure for registration: if no objection was made to the application for registration, the Collector would at once proceed to register; but to use the words of section 61—"If in the case of the alleged transfer from a living person the fact of possession by the applicant is not proved, or if the right of succession be disputed by or on behalf of any person making a conflicting claim, and it be not proved to the satisfaction of the Collector that the applicant has acquired possession in accordance with his claim to succession, the Collector shall refer the matter to the determination of the principal civil court of original jurisdiction." And the result of that would be that the principal civil court would refer the matter to any other competent civil court, and that court would proceed on the model provided by Act XIX of 1841 to try summarily the question of right to possession. The provisions of the Bill here followed Act XIX of 1841 almost closely. He was aware that a great deal might be said against these summary trials, and he was aware that such trials were generally considered to be only so much useless trouble and expense. But he had not been able to devise anything else which would answer the present purpose, and he could only hope that if these trials were considered to be mere useless trouble and expense, the assistance of the learned Advocate-General would enable the Select Committee to devise something less objectionable, and which would not miss the object of the Bill, which was to enable the Executive Government at once to identify the person to whom the obligations of landholders attached in respect of every estate. Any decision so summarily passed by a civil court was of course open to be contested by a regular suit immediately afterwards, which regular suit would be decided any time within the next ten years, during which time it was absolutely necessary for the executive administration of the country that the Government should know in whose possession the land was, and who was the person liable to fulfil the duties which the law imposed on the owners of land.

Sections 69 and 70 imposed penalties for failure to register. As soon as the Collector discovered that the person liable to register had failed to do so, he might call upon him to obey the law, and might impose a daily fine. Then there was another and a very much stronger means of insisting on the fulfilment of the

obligation for registration, which was provided by section 70,—a provision which of course would be much discussed in Select Committee. It provided that no person required to register should be able to avail himself of the facilities which the existing law gave for the recovery of rent, until he had applied for registration.

Section 71 provided that the persons required by this Bill to register should be the persons who were liable to fulfil the obligations which the law imposed on landholders.

The last Chapter contained miscellaneous provisions, and the only part of it to which he would call attention was section 74, which laid down precisely the appellate jurisdiction. In that section was followed the principle that when the court of first instance and the first appellate court were agreed, there should be no further appeal; and he thought that in a summary matter of this sort, which did not affect the right to title, that would be sufficient.

With these remarks he begged to move that the Bill to provide for the compulsory registration of possessory titles in revenue-paying estates and revenue-free lands be read in Council.

The HON'BLE MR. SCHALCH said he entirely approved of the objects for which this Bill was introduced, viz. to ensure the responsibility of those who were required by the law to perform certain duties; and the letter of the Secretary to the Board of Revenue, which was printed among the annexures to the Bill, fully entered into the subject. It would not therefore be necessary for him further to dilate on that subject in the Council. There was, however, one question of detail to which he wished to draw the attention of the Council. By section 43 the provisions now in force of the existing law, requiring the civil courts to forward a memorandum of all decrees and orders passed by them to the Collector, which might create, declare, transfer, limit, or otherwise extinguish any proprietary possession in an estate, or alter the area of such estate, were continued. He was aware that this was the rule which was in the existing law. But in reality that law had become a dead-letter, and had never practically been enforced. He would therefore ask the Select Committee to take this point into their consideration, and determine whether it was necessary to continue that provision, or whether it would not be better to throw the burden of such registration, and render it obligatory on the parties to the decree to forward such information to the Collector, and not bring the civil court directly into the question. On the whole, the Bill met MR. SCHALCH'S full approval, and, he thought, would supply the want which had been felt.

The HON'BLE THE ADVOCATE-GENERAL said that although he was averse to the adoption of any legislative measure which had for one of its objects the decision of claims to land, or the possession of land in a summary manner, as creating complications and difficulties in the adjudication of titles, yet he was obliged to admit that in the present case the Bill proposed to be introduced into Council was a necessary and salutary subject of legislation. The earlier Regulations, which it was proposed to repeal, had almost fallen into disuse, as, owing to the increased value of land, it had become unnecessary to look to the zemindars personally for the recovery of arrears of revenue. The utility of

these regulations, so far as they were applicable and capable of being enforced, had been revived by the introduction of several Acts which had been lately passed, enforcing certain obligations on the part of zemindars which, although previously existing, had either been forgotten or were not observed. The Embankment Act was an instance of an obligation which had been enforced by the legislature. Other legislative measures had also been lately passed which threw on zemindars certain distinct obligations which it would be difficult to enforce unless the scheme of legislation provided by this Bill received legislative sanction. Under these circumstances, it occurred to him that the present was a fitting time for the introduction of a Bill for the compulsory registration of possessory titles to land; and with a view to its efficiency, its clauses should be stringent and comprehensive. Irrespective of the substantial aid which this Bill would afford to the Government in the enforcement of legal obligations by owners and possessors of landed property, it would in some measure contribute to the administration of justice, and would, moreover, materially assist persons in the purchase of landed property with reference to the investigation of title.

With reference to *milik* lands mentioned by the hon'ble mover, it was evident that many of these tenures existed only in name. They were often created by defaulting owners after default and sale, and antedated in order to secure an income for their families. By a system which provided for the registration of *milik* lands, purchasers of revenue-paying estates would be enabled to know exactly whether such tenures had any existence prior to the purchase within the geographical limits of their estates. An intending purchaser of a revenue-paying estate (agreed to be purchased privately) would also be enabled, by inspecting the register, to ascertain what amount of *milik* lands should be excluded in the computation of the area of the estate (proposed to be sold), which was very often so calculated as to include all lands within the geographical limits of an estate, and thus to compute the exact amount of purchase money payable for the whole at a certain rate per beegha. Under existing circumstances, a purchaser might purchase an estate with a certain estimated area, excluding all lands within its boundaries as defined by a *thakbust* map or revenue survey, and pay the full price of the same at the rate of a certain sum of rupees per beegha; and in proceeding to take possession he might be met by persons opposing such possession as to part of his purchase by putting forward claims thereto on the ground of their being *milik* lands. At present he must either submit to these claims, or resist them in the hope of being able to controvert them. After the present Bill passed into law, a person so circumstanced would have something to go upon in determining his course of action.

The Hon'ble Baboo Kristodas Pal said he would cordially support this measure. Its object was to fill the void caused by the non-observance of the Regulations of 1793 and 1800. It was to be regretted that the wholesome provisions of the Code of Regulations of 1793, that repository of legislative wisdom, fell into disuse from laxity in administration. He was of opinion that if the registration of possessory titles and the exchange of written leases had been regularly enforced in accordance with the provisions of the law, there would not have been so much misunderstanding, confusion, and litigation as had

unfortunately attended the land administration of the country. The hon'ble and learned Advocate-General had pointed out the principal advantages which would flow from the Bill. BABOO KRISTODAS PAL might observe that this Bill would form a useful adjunct to the Partition Bill. In fact, without this Bill no progress could be made with the other; it would form the basis of the other. Once the number of proprietors and shareholders was registered, it would be easy for the Collector to know who the recorded proprietors were, and whether they were in possession; and then the machinery of the Partition Law might be moved to the advantage of the State and the landed interest. He also hoped that the enforcement of this law would put an end to what was called the *benamee* system. He believed that that system was gradually falling into disuse, but this Bill would lay the axe at the root of the tree.

With regard to the details of the Bill, the Select Committee would doubtless give their best consideration to them. But he might observe, *en passant*, that for the purposes of the Bill he did not see any objection to the summary investigation of claims to registration for the purposes of the proposed Act. But he thought it would be more convenient if the Collector were invested with the power of investigating these claims summarily instead of the civil court being brought in, particularly when full liberty was given to the parties to contest the decision of the Collector by a regular suit in the civil court. It appeared to BABOO KRISTODAS PAL that it would simplify business if the whole proceedings under the Bill were left in the hands of the Collector.

The scale of fees for registration had not been given in the Bill, except that the maximum fee should not exceed Rs. 100. He hoped that the scale would be so regulated as not to put an unnecessary obstacle in the way of registration. In fact he thought the scale of fees should be made conformable to the scale provided for ordinary registration under the Registration Law.

He did not agree with the hon'ble mover of the Bill that a double penalty should be imposed on the proprietor, first a daily fine, and secondly the disability to sue. This outlawry, as it were, struck him as very harsh, and not quite in consonance with the general spirit of the law. A daily fine ought to be sufficient to enforce registration; the penalty of outlawry appeared to him to be outrageous.

He would like to add one provision to the Bill. It was this, that when shares were registered they should be notified in the villages in the widest manner possible, so that every ryot might know who the sharers were, and what was the extent and character of each share. At present the ryots in many cases did not know what was the extent of the respective shares of joint owners, and consequently more money was sometimes taken from them by the shareholders than they were liable to pay. Already a measure was contemplated to give relief to ryots in cases of joint undivided estates, the owners of which realized their demands separately. But if such a provision as he had suggested were introduced in this Bill, it would not be necessary to have further legislation on the subject. The ryots would know who the proprietors were, and what was the extent of the share of each proprietor, and they would take good care not to pay more rent than each shareholder was entitled to

receive. He threw out this hint for the consideration of the Select Committee, in the belief and hope that the registration of the value and extent of shares of joint proprietors would be attended with great practical benefit.

His Honor the President said there was one point upon which he would like to ask a question to the hon'ble member who had last spoken. He would ask the hon'ble member to be kind enough to explain exactly what he would propose in reference to the investigation of the rights of various shareholders in an estate; that was to say, if he would give the precise substance of what he would wish to be done. Because it appeared to His Honor, with deference to the hon'ble member, that the suggestion made by him was a very important one. We all admitted the practicability of registering the names of shareholders, but beyond that it had been found too difficult to go. It was one thing to say that a man was a shareholder in an estate, and another thing to specify what share he held. There had never been any difficulty or trouble in ascertaining the fact that a man was a shareholder, but when you came to say what was his share, you raised difficulties and discussions.

The Hon'ble Baboo Kristodas Pal thought that the registration of shares in an estate would come under section 49, at least so he understood that section. He was of opinion that if shares were registered, a great practical benefit would result. In case of dispute the Collector might hold a summary investigation, all right and title being reserved for decision by the civil court as provided for in the Bill.

The Hon'ble Mr. Dampier observed that sections 49 and 50 were the sections which imposed the obligation to register, and they only provided that the name of every shareholder should be registered. It was certainly not the intention of the Bill to require the extent of each share to be recorded.

The Hon'ble Mr. Bell thought there was a slight misapprehension on the part of the hon'ble member opposite. As the law at present stood, a shareholder could not sue a joint ryot for his fractional share of the rent. It seemed therefore unnecessary to enter at present into the question raised by the hon'ble member.

The Hon'ble Mr. Dampier said he was sorry that the wording of the Bill had left room for any such misapprehension as the hon'ble member had entertained. The old Regulations certainly did not require registration of the extent of the separate shares in an estate. In some districts the practice had been to register the extent of each joint share, where all the proprietors were agreed as to such extent, but that practice had been in recent times, he believed, discontinued, as it was found to lead to inconvenience. In asking leave to introduce this Bill he had said:—

"The Council were aware of the difficulties and vexations to which the ryots were exposed when they had to pay rent to a number of joint shareholders in estates. The Government had very carefully considered whether it would be desirable to enact that every proprietor should not only register his succession to possession, but also the share to which he had succeeded. On mature deliberation the Lieutenant-Governor had come to the conclusion that this could not be done. It was hoped that another measure, to be presented to the Council hereafter, would provide that relief to the ryots which would have been afforded by the registration of shares. In some cases it would be very difficult, even if it would be

possible, to register succession with specification of shares; for instance, some places in which the *mitakshara* law was in force."

The Bill was intended to be in accordance with these remarks.

The hon'ble member had said that he should prefer that the Collector should try the question of rights summarily. MR. DAMPIER could not agree with this, if only for the reason that it was an object now to relieve executive officers as much as possible from such quasi-judicial work.

The next point to which the hon'ble member alluded was as to the scale of fees. MR. DAMPIER had overlooked that question when he spoke. It would be a matter for the consideration of the Select Committee what scale of fees should be adopted. And he must remind the Council that whatever scale was adopted, the formal sanction of the Governor-General would be required before they could legislate, as the point was one affecting the imperial revenues. At present a law of the Governor-General's Council prescribed a certain scale of fees. As the provisions of the Indian Councils' Act stood, this Council could not, even for the sake of consolidation, repeal that law, and re-enact the very same provisions in the Bill now before them, without previously obtaining the sanction of the Governor-General to their so dealing with the subject.

The third point to which allusion had been made was that it was not desirable, indeed it had been termed outrageous, to subject a person to outlawry, as it had been called, by disabling him from suing for rents until he complied with the requirements of this Bill.

Now the case stood thus. The Bill required that if a landholder were in possession of an estate, he should cause himself to be registered. The existence of such possession as was sufficient to secure admission to registry was also a *sine qua non* to the successful prosecution of an honest suit for the recovery of rent.

The hon'ble member's objection seemed to MR. DAMPIER to amount to saying that the law, as contained in the Registration and in the Rent Acts, should allow a man to come forward and say, "I am in possession of such an estate, and on that ground I claim the assistance of the law to recover rents from it; at the same time I refuse, for my own reasons, to comply with the obligation which the law imposes on me to register myself as landholder in possession of the estate, as such registration will identify me as liable to fulfil the obligations which the law imposes on the holder of the estate"

Surely that was not a position which the law should allow any one to take up. The enforcement of the provision of this section would not cause any appreciable delay in suing for rents, because it did not enact that a man might not sue until he had *effected* registration, but only until he had applied for registration. So that if a person wished to sue a ryot, he had only to send in his application for registry, and then he might institute his suit at once.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Schalch, the Hon'ble the Advocate-General, the Hon'ble Mr. Bell, the Hon'ble Baboo Kristodas Pal, and the Mover, with instructions to report in a fortnight.

The Council was adjourned to Saturday, the 22nd instant.

Saturday, the 29th January 1876.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding*,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. L. Dampier,
The Hon'ble Sir Stuart Hogg, Kt.,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble T. W. Brookes,
and
The Hon'ble Baboo Kristodas Pal.

CALCUTTA MUNICIPALITY.

The Hon'ble Sir Stuart Hogg moved that the report of the Select Committee appointed to consider the question of the constitution of the Municipality be taken into consideration in order to the settlement of the draft clauses prepared by the Committee. When he brought before the Council the draft report of the Select Committee to amend the law relating to the municipal affairs of Calcutta, he said that, having carefully considered the relative advantages of having elective members of the Corporation as against the appointment of these members by the Government, and having regard to the peculiar circumstances of Calcutta, he had arrived at the opinion that a Corporation, consisting of members appointed by Government, would probably work better, and be found more efficient than a Corporation elected by the people. He further said that if the Calcutta of to-day were compared with the Calcutta of some ten years ago, he thought that the persons who were most adverse to the present system of the municipal constitution of the city could not but agree that the improvements accomplished by the Justices as at present constituted were such as would have been difficult to have been attained, or, if they had been attained, could not have been better done by any other body, whether elected or not. From what had since transpired in the public newspapers, and also from discussions in the Council, speaking for himself individually, he saw no reason to depart from the opinion he then gave. However, many members of the Council were of a different opinion; and it was decided to let the sections bearing upon the constitution of the Municipality stand over, and only take into consideration the other sections with regard to the executive organization of the Municipality.

We came now to the consideration of the clauses of the Bill which had a direct bearing upon the constitution, and which the Council referred back to the Select Committee for consideration; and they had drawn out a report and draft sections to introduce into Calcutta the elective system. In accordance with the instructions they had received, the Select Committee had drafted clauses which were calculated to meet the objects the Council had in view.

The general scheme now proposed by the Select Committee was—1st, that the town should be divided into 18 wards, conterminous with the existing police sections; 2nd, that the Corporation of Calcutta should consist of 72 members, of which 54 should be elected by the rate-payers and tax-payers of the city, with the qualification that every person who desired a vote should have paid during the preceding year not less than Rs. 25 in the way of rates and taxes; the qualification for persons desirous of becoming members of the Corporation being that they should pay Rs. 100—rates only, not taxes—for the year 1875.

With a view to secure all classes of the community being fairly represented on the Corporation, the Committee had proposed that they should lay down the number of Hindus and Mahommedans, and persons of other nationalities, who should be appointed as members of the Corporation. What they had suggested to the Council was that out of 54 members to be elected by the people, 27 should be Hindus, 9 Mahommedans, and 18 persons other than Mahommedans and Hindus. Eighteen members of the Municipality should be appointed by Government; of which 9 members should be Hindus or Mahommedans at the pleasure of Government, and the remaining 9 persons of other nationalities,—Europeans, Armenians, Jews, Parsees, &c. This, in the opinion of the Committee, would secure all members of the community being fairly represented.

As the clauses of the Bill were likely to give rise to considerable discussion, he thought it was useless taking up their time now; and he would endeavour to answer or explain any objections that would be raised when the clauses came on for consideration.

Sections 1 to 4 were agreed to.

Section 5 declared the number of Commissioners to be elected and their nationalities.

The Hon'ble Mr. Brookes said, this appeared to him to be one of the most important sections of the report of the Committee. There were two matters in this section which occurred to him as well worthy the consideration of the Council. One was the proportion of the nationalities of the gentlemen who were to be elected and to compose the Corporation. The numbers were—27 Hindus, 9 Mahommedans, and 18 of other nationalities. He wished to speak more particularly in reference to the 18 members put down as representing all other nationalities in the Corporation, which would include English in its widest sense, Scotch, Jews, Armenians, and so forth. He was inclined to think that, considering the important bodies which these nationalities represented in Calcutta, 18 was not a sufficient number to represent them in the Corporation. That was of course for the Council to decide; but he merely threw it out as a suggestion worthy of the consideration of the Council.

There was another point in the section, and that was the qualification of members, namely, the paying of *rates*. He thought that would exclude many Europeans, that is, many of those who were included in the 18 of other nationalities, inasmuch as many of them lived in clubs, chummeries, and boarding-houses; and simply because they did not pay rates, they would be disqualified from being members of the Corporation. He would therefore suggest that the words

The Hon'ble Sir Stuart Hogg.

"or taxes" be added, which would bring these gentlemen within the number of those qualified to represent various communities. He suggested that the number of 25 would not be out of proportion for persons representing those interests; that would leave 29 members out of 54 to represent Hindus and Mahommedans, which, in the same proportion as that given in the section, would give 22 Hindus and 7 Mahommedans. He thought that that proportion would meet the case.

The HON'BLE BABOO KRISTODAS PAL said, the principle on which these sections were based, he might say, affected the success of the whole scheme, and he was of opinion that it was a principle which had the character of dictating to the electors whom they should elect, and would not leave them freedom of choice. He quite appreciated the liberality of the Government in conceding to the rate-payers the right of election. But if he understood the wishes of the Government rightly, it was this, that the electors should have a full and unrestricted liberty of electing whomsoever they chose, and not that the Government should tell them that in particular wards they should elect particular men to represent their interests. It was true that at the outset the Government should reserve to themselves some power of nominating members of the Corporation, and for that reason one-fourth of the members was left to the nomination of the Government. But with regard to the three-fourths, he humbly thought that full liberty should be given to the rate-payers to elect those in whom they might have the greatest confidence, be they Hindus, Mahommedans, Europeans, Jews, or Parsees. He would ask the Council to consider what would be the position of a ward for which the Government should declare that the electors should elect a Hindu if they did not find a competent Hindu to fill the office. They might have greater confidence in some European or Mahommedan, but under the law they would be driven to elect some Hindu, or should forego the right of election altogether. This, he considered, was not election, but dictation. The Government dictated that they should elect a man of this nationality or that, or should go without the right of election. That was not in consonance with the spirit in which this measure had been conceived. He therefore held that the proportions of nationalities provided in the section was not quite in accordance with the principle of the Bill. He admitted that the circumstances of Calcutta were peculiar; that there existed in this city a varied community with conflicting interests, but not always he hoped so. The working of the existing Municipality had shown that the interests of all classes of rate-payers were identical, and that they had one common object in view, viz. the good of the town. If, then, it were left to the good sense and judgment of the electors to elect representatives according to their own knowledge of persons competent to discharge the duties of Municipal Commissioner, it would accomplish the object aimed at. Entertaining that opinion, he would submit that the clause relating to proportion be omitted altogether, and that the electors be left entirely free to elect whomsoever they might think fit. It might be said that the larger number of rate-payers being Hindus, they would flood or swamp the Corporation; that was to say, the majority of persons elected would probably be Hindus, and that other

sections of the community would be over-ridden. He did not think that that would be the case. For his own part, he thought that the Hindus were well aware that they had to learn a good deal from Europeans, and that, in the matter of municipal management, they by themselves could not do much. United with Europeans, they could do a great deal, but single-handed the Hindus were too weak. So he did not believe that the result would be in the direction apprehended.

Then, again, he fully subscribed to the remarks which were made by his hon'ble friend opposite (Mr. Brookes) as to the desirability of raising the number of those persons who should not be Hindus or Mahommedans. But there ought to be some principle on which the proportion should be regulated. If, as he understood, the object of the principle on which this clause was based was that there should be representatives who had a stake in the city, and that therefore persons paying rates only should be considered eligible for election, if that was to be the real principle upon which election was to be based, then the Council should consider which portion of the community had the greatest stake in the town. He was sorry that this question was raised, but it could not be avoided if the rule of proportion were laid down. It was an invidious question, but he could not help alluding to it. If it were left entirely to the judgment of the rate-payers to elect whomsoever they thought fit, that question would not arise. Considering, then, the comparative stake which the several sections of the community had in the town, he thought the Council ought to regulate the rule of proportion accordingly.

With regard to the qualification of persons to be elected, his hon'ble friend had already anticipated him: in fact they had dwelt upon that point in their joint dissent. Baboo Kristodas Pal had already given notice of a motion that the payment of taxes should be included in the qualification of persons to be elected; and he had also given notice of another motion that the qualification of Rs. 100 should be reduced to Rs. 50. And here he should state, for the information of the Council, that in Select Committee he did not object to Rs. 100. But it had since been represented to him by native gentlemen that the qualification of Rs. 100 was too high, considering the peculiar position in which educated native gentlemen, who would probably be most competent to discharge the duties under the law, were placed. He believed it would be admitted that it was in the highest degree desirable that the intelligence of the town should be fairly represented in the municipal body; and it was thought that the qualification of Rs. 100 in the payment of rates would be too high, and would exclude a large number of the educated natives from coming forward. Perhaps it would be convenient to discuss that amendment after the general principle of the clauses was disposed of.

His Honor the President enquired, if the hon'ble member voted for the omission of the first part of section 5, what would he say to Section 3, which provided that out of 18 members appointed by the Government, not less than one-half should be Hindus or Mahommedans: he presumed that in that case the hon'ble member would leave the choice of the Government unrestricted.

The Hon'ble Baboo Kristodas Pal.

The HON'BLE BABOO KRISTODAS PAL said he would leave it entirely to the discretion of the Government to appoint Hindus, Mahommedans, or Europeans, as it might think fit.

The HON'BLE SIR STUART HOGG said he was quite prepared to admit that it was a very difficult task to lay down in the way the Committee had done the proportion of the members of the different nationalities to represent the rate-payers. However, he might say that it was absolutely necessary to do so, otherwise the inevitable result would be that nearly all the members of the Corporation would be Hindus, and the Mahommedans, Europeans, and other nationalities would not be fairly represented. He agreed with the hon'ble member opposite (Mr. Brookes) that objection might perhaps be taken to the small number of 18 being allotted to nationalities other than Hindus and Mahommedans. Of course it might be that many of these 18 would be Armenians, Jews, and persons other than Europeans. But it must be borne in mind that the population of Calcutta consisted of communities and persons of all nationalities. The foreign community of Calcutta consisted of only about 24,000 or 25,000 souls; consequently, taking the whole population at 450,000, it struck him in drafting the sections that the number he gave (18) was very fair, having regard to the very small number of persons other than Hindus or Mahommedans residing in Calcutta. If the proportion of 18 was raised to 25, and we adhered to the principle that the Government was to dictate to the wards the number of each nationality which was to be elected by that particular ward, then we had to face this difficulty, that we should be calling upon Natives, Mahommedans and Hindus, to return European members. It might be said, generally, that in all Calcutta there were only four wards where Europeans resided,—the wards south of Dhurrumtollah Street, and perhaps a portion in Old Court House Street. The idea of the Select Committee was that these four wards should each be called upon to return four members of nationalities other than Hindus or Mahommedans, leaving it to one of the other wards to return two members of this class. The remaining 12 wards would return entirely Hindus or Mahommedans, as it was supposed they would be able to select from amongst the native community persons who were in every way qualified to represent their interests. If, however, we increased that number to 25, Government would be compelled to call upon the wards occupied exclusively by natives to return Europeans, which was a somewhat anomalous position to assign to them. He would here remark that from the census of Calcutta, the number of Hindus appeared to be about 290,000 or 300,000; the Mahommedan population about 133,000. But although the Mahommedan population was a little less than one-half of the Hindu population, yet the intelligent portion of the community was chiefly found amongst the Hindus and not the Mahommedans. And although we had a large number of Mahommedans, they were mostly composed of the poorer classes, and probably very few of them would be entitled to vote for men to represent them in the Corporation. Consequently we might assume that nearly all of the rate-payers who would return members would be Hindus. For that reason the proportion of 9 Mahommedans to 27 Hindus had been given.

His Honor the President observed that on a question of this kind, if the members approved, he would propose merely to take a provisional decision,—to take the sense of the Council on the proposed sections, with the proviso that such decision should not in any way bar the right of any member to bring forward amendments at a future meeting. He would first put the proposition, should the Bill lay down any specific proportion of nationalities amongst the members of the Corporation or not?

The Hon'ble Sir Stuart Hogg would suggest that if the Council were very strongly opposed to any proportion of nationalities, the number of members to be appointed by the Government should be increased to 24, leaving 48 to be elected.

His Honor the President remarked that the alternative put forward by the hon'ble mover of the Bill was that which His Honor suggested on the 27th November last. He would call the recollection of the Council to what he said then:—

"After much reflection, it appears to me that the best number I can suggest is sixty. Out of these, at least forty, or two-thirds, should, in my opinion, be elected, and the remaining one-third be appointed by Government. But whether the proportion should be one-third or some less proportion than that, say one-fourth, would depend on the decision that is arrived at as to whether certain thanas should be obliged to return European representatives. If that exception were not allowed, and if it were possible that all the representatives elected would be natives, then I think it would be necessary to give Government the power of appointing such European (official or non-official) gentlemen as it may see fit. In that case the number should be at least one-third to be appointed by the Government. But if, on the other hand, that exception were allowed, and a positive chance be given to the Europeans in the European quarter to be elected representatives, then I think it will be sufficient for the Government to have the power of appointing either one-third or one-fourth; then it would be able to select perhaps certain officials who, from their position in the town, are peculiarly qualified to be Commissioners, or certain European non-official gentlemen, or also certain native gentlemen of rank and position."

In reference to what had fallen from hon'ble members, the first point on which he should ask the provisional decision of the Council was whether there should be a proportion of nationalities laid down by the law or not. If the Council decided that there should not be any proportion of nationalities, then the question would arise as to whether the proportion of members to be appointed by the Government should not be increased. He might say that in so far as he could perceive, it was not a matter which very much concerned the Government; either plan was quite feasible; that was to say, you might have a section as now drafted, prescribing the proportion of nationalities by law, or you might omit any such dictation by law, and then increase the proportion of members to be appointed by the Government, and leave a discretion to the Government to appoint whom they thought fit. This was exactly one of those provisions on which it appeared to His Honor that the Council should be able to give their decision. He thought it would be admitted by the majority at least of the Council that if you did not lay down any proportion of nationalities, then you must give to Government such a proportion of appointed members as would give Government the means of rectifying the balance if

necessary; and the question would be whether the proportion of appointed members should be one-fourth or one-third. Hon'ble members would see that if you only allowed one-fourth to be appointed by Government, and the remaining three-fourths to be elected without restriction of choice, then it would leave a very narrow margin to rectify the balance. But if you allowed one-third to be appointed, there was no doubt that that proportion would give the opportunity of rectifying the balance, supposing any rectification were necessary.

The HON'BLE BABOO KRISTODAS PAL thought that the proportion of one-fourth would leave a sufficient margin; but if the Government thought one-fourth not a sufficient proportion, he would leave it to the discretion of the Government to appoint one-third.

After some further conversation, the question that the first six lines of section 5 (declaring the proportion of nationalities) be omitted, was put and agreed to, and the motion to increase the number of nominated members from 18 to 24, or from one-fourth to one-third, was also carried.

The HON'BLE MR. BROOKES' motion to include "taxes" in the qualification for election as a member of the Corporation was agreed to; and the HON'BLE BABOO KRISTODAS PAL'S amendment to reduce the qualification for membership from the payment of Rs. 100 rates and taxes to Rs. 50 was negatived.

The section as amended was then agreed to.

Section 6 provided that in the case of partnership firms, or joint undivided families, the Chairman should decide which of the members of the firm or family was eligible for election.

The HON'BLE BABOO KRISTODAS PAL enquired whether it was clear that the Chairman's decision as to which member of a firm or joint undivided family should be included in the list was open to an appeal before a stipendiary Magistrate, for if it were not so, he would move that the words "subject to an appeal under Section 12" be added to the section.

The HON'BLE THE ADVOCATE-GENERAL believed that the decision of the Chairman would be open to appeal; there might, however, be a doubt in the matter, and he therefore thought the words proposed should be inserted.

HIS HONOR THE PRESIDENT thought it would be very difficult for a Magistrate to adjudicate upon the Chairman's decision in a matter of this kind. If, for instance, the Chairman had to decide between three brothers, one of whom might be old and disabled, another very sickly, and the third a man of ability and energy, he would probably exercise his discretion by entering the name of the most able man of the family. That was exactly a sort of question which the Chairman would be best qualified to decide. Suppose the Chairman's decision was appealable to the Magistrate, would the family itself like to have the merits and demerits of its members argued before the Magistrate? HIS HONOR believed not. It was a kind of administrative question, and partly a personal question, which he thought ought not to be appealable to a Magistrate.

The HON'BLE THE ADVOCATE-GENERAL observed that if the Magistrate found no good ground for interfering with the Chairman's decision, most probably he would not interfere with the decision passed.

The HON'BLE MR. DAMPIER believed that, under ordinary circumstances, the members of a family would agree in naming their representative; but if they could not agree, he thought the Chairman should decide for them, and his decision should not be appealable.

The HON'BLE BABOO KRISTODAS PAL submitted that the object of the law, as HIS HONOR had often told them, was to provide for extreme cases. If, for instance, the Chairman should not accept the representative named by the family, but nominate some other member of the family, would not the members of the family have a right to appeal?

The HON'BLE MR. BELL thought that no appeal should lie from the Chairman's decision. The best plan would be to allow the members of the joint family to nominate their own representative; and if they could not agree, the family should not be permitted to avail themselves of the privilege conceded by this section.

The HON'BLE SIR STUART HOGG remarked that in every case an inquiry would have to be held as to who were the members of a joint undivided family. It must be an arbitrary provision of law. The point had been very carefully considered in Committee, and they had found it very difficult to provide any satisfactory solution of the question. He would prefer giving an appeal to a Magistrate as the simplest way of deciding the question: it would enable the Magistrate to rectify any mistakes which the Chairman might make. That, he believed, was the intention of the Committee.

The HON'BLE MR. DAMPIER thought there would be so many cases in which there would be no doubt and no dispute as to which member of a firm or joint undivided family should be taken as the representative, that we should give the members of the family the privilege of nominating a member where they did agree. Then in the cases in which there was doubt or dispute as to which member should be nominated, he thought that the Chairman should have the power of selecting the person who should represent the firm or family. That would prevent litigation. There should, he thought, be no appeal from an executive inquiry such as this.

The HON'BLE MR. DAMPIER'S proposal was then put and negatived.

The HON'BLE BABOO KRISTODAS PAL'S amendment to insert the words "subject to an appeal under Section 12" was agreed to, and the section as amended was passed.

Sections 7, 8, and 9 were agreed to.

Section 10 having been read—

The HON'BLE BABOO KRISTODAS PAL moved that this Section and the following be taken together. Section 10 required electors or persons qualified to be elected to apply to the Chairman of the Commissioners for registration of their names as voters or persons qualified to be elected, and then the Chairman would insert their names and publish the list. BABOO KRISTODAS PAL would move the omission of Sections 10 and 11 and the substitution of the following:—

"As soon as possible after the commencement of this Act, and subsequently on or before the first day of March in each year, a list of the persons qualified to vote at any election, and

also a list of the persons qualified to be elected as Commissioners of the town, shall be prepared, printed, and affixed by the Chairman of the Commissioners in some conspicuous place in or near his office, and at the Police Station of each of the wards, or at some other conspicuous place in each of the said wards; and the Chairman shall forthwith give notice of such publication in one English and one vernacular newspaper published within the town; and the said list shall be open to public inspection at all reasonable times of the day for fifteen days after the date of the publication of such notice.

"The Chairman shall be at liberty at any time to revise the said lists for the purpose of removing therefrom the name of any person not duly qualified and erroneously entered therein, or of recording the name of any person duly qualified and erroneously omitted therefrom."

He might mention, for the information of the Council, that this was a section which had been originally agreed to by the Select Committee, at the first stage of their deliberations; but the hon'ble member in charge of the Bill, who was also the Chairman of the Justices, informed the Committee that it would be practically impossible for him to prepare correct lists with the materials at his disposal, and he thought it therefore necessary that voters should be required to send in their names, and he should then prepare a list from the applications so registered. Now, BABOO KRISTODAS PAL submitted that if any one was in a position to prepare a correct list, or an approximately correct one, it was the Chairman of the Justices. He had the machinery at his command, which ought to enable him to know which of the rate-payers were eligible to act as electors or to be elected. The provision which BABOO KRISTODAS PAL recommended was taken from the Bombay Act; and if in Bombay such a section worked successfully, he did not see why it would not work equally well here. The Chairman said that many houses in the town stood in the names of persons who were dead, and that therefore it was impossible for him to obtain the names of those who were actually now the owners of property or actual rate-payers. Supposing that the procedure which the hon'ble mover recommended, and which was embodied in the Bill, was accepted, it would not obviate the trouble the Chairman would have to incur in any case. Suppose a person sent in his application to the effect that he was qualified to vote. The Chairman must satisfy himself that he was a rate-payer, and paid Rs. 25 annually; and if the Chairman could not find his name in the assessment books, he must institute independent enquiries, either from the collector's rate books, or from the books of the assessing or some other officer at his disposal. In either case enquiry must be made. But if an elector were required to send in his application for the registration of his name, practically the new machinery would be brought to a dead-lock. Considering the peculiar circumstances of native society, BABOO KRISTODAS PAL did not hesitate to say that there were many persons who would not trouble themselves to exercise the new privilege. If they, on the other hand, came to know that the published lists contained their names, and they were recorded as voters, they would doubtless exercise the franchise; but he did not know that there would be many persons who would take any trouble before they knew that their names were entered in the list. The Chairman would perhaps have to go over the same thing twice if he had to receive names from applicants. First, he must satisfy

himself that the names borne on the assessment lists were not correct; and secondly, that the application made was correct. It would be much better, BABOO KRISTODAS PAL thought, if the Chairman took the initiative, prepared the lists and published them throughout the town, and invited persons to make any objections they might have, before the electors were furnished with voting papers. As the system had worked fairly, as he was informed, in Bombay, he thought it ought to be adopted in Calcutta.

The HON'BLE SIR STUART HOGG said that he regretted he could not accept the amendment which had just been moved, for the reason that it would be practically impossible for the executive to carry on the work proposed by the amendment. The hon'ble mover of the amendment knew better than any one that in the Northern part of the town most of the property, he might say, was registered in the names of persons who were not actual owners. It belonged mostly to Hindu families, who, to prevent dissension and to avoid disputes, allowed property to stand in the names of their ancestors; and the Justices never considered themselves justified in changing the names of the proprietors of houses, except upon the application of persons in whose possession the property was. The consequence was that the property remained registered in most cases in the names of deceased persons. They sent bills to the houses, and payment was made in the name of the person in whose name the property stood registered. Consequently it was absolutely impossible for the Chairman to prepare a list of persons in the town who had, during the year preceding, paid Rs. 25 in rates and taxes. The plan proposed to be adopted was that the persons who desired to avail themselves of the privilege of the franchise given to them in the Bill, should come forward and say that they were proprietors or occupiers of such and such a house, and that they had, during the preceding year, paid rates and taxes amounting in the aggregate to Rs. 25. They would then be called upon to prove their qualification, and the proof would be that they would have to produce receipts for the money they had paid during the year. These receipts would then be compared with the registers in the office, from which lists would be made. He would ask the Council not to impose upon the executive a duty which, he felt certain, it would not be possible for them to carry out in an efficient manner.

The HON'BLE MR. DAMPIER said, if he understood the matter rightly, there would be this objection to the adoption of the scheme proposed by the hon'ble member opposite (Baboo Kristodas Pal). If the Chairman had to prepare the list, we should have a list containing the name of the same individual often in different places. He himself, for instance, paid the water, police, and lighting rates in the name of a Mr. Caridia, of whom he knew nothing. Under the procedure proposed, Mr. Caridia would probably be entered as a person qualified to vote in virtue of his paying those rates.

Then, again, MR. DAMPIER paid the tax on horses and carriages in his own name, and therefore his name would probably also appear in the Chairman's list as a person qualified to vote. So that in a list prepared by the Chairman as proposed there would be two entries to represent the one vote which MR. DAMPIER would have the right of giving. There would be

no such double entries in a list prepared on the application of persons who claimed votes. He thought, therefore, that the plan proposed in the draft sections was the better of the two.

The motion was then put and negatived, and Section 10 was agreed to.

Sections 11 to 16 were agreed to.

Section 17 specified the various objects to which municipal funds were declared liable.

The HON'BLE BABOO KRISTODAS PAL said he would take a preliminary objection to this section. He might remind the Council that the question of the application of the municipal funds was originally discussed in the Council and disposed of, he believed, in reference to section 5, in which it was proposed that the Justices should have power to apply municipal funds to other purposes than those specified in the Bill, provided the same were sanctioned by them in meeting. When that section was discussed in the Council, objection was raised by himself and an hon'ble member who was then absent (Mr. Schalch), and he believed by other members too, that such powers ought not to be given to the Justices, as the municipal funds were sufficiently burdened at present, and that they were not sufficient to meet the ordinary requirements of the town. The Council was divided, and that part of the section was thrown out. Such being the case, he doubted whether it was competent for the Select Committee to re-open the question, and extend the scope of the law for the application of municipal funds. He raised that objection in Committee, but he was in a minority. If the object of the hon'ble member in charge of the Bill was simply to summarize the specific purposes to which the municipal fund was held to be applicable under the law, BABOO KRISTODAS PAL would not object; but the hon'ble member had gone beyond that; he had considerably added to the objects to which municipal revenues were now declared to be applicable. In the joint dissent which he and his hon'ble friend opposite (Mr. Brookes) had recorded, they had specified some of those items, and he would take them one by one.

First of all, take the items under the heading "public health," which ran as follows:—"Defraying the cost of the construction and maintenance of hospitals and dispensaries, and of the charges of vaccination, the registration of births, deaths, and marriages, and taking a census." Now, under the existing law, which had been in force for the last twelve years, the Justices had no power whatever to make any grant for the construction of dispensaries and hospitals. He might remind the Council that about five years ago application was made by Government to the Justices for a grant towards the re-construction of the Medical College Hospital. Government also appealed to some other public bodies, but were not successful, or only partially so. Government wanted six lakhs or more for this purpose, and the application to the Justices was renewed more than once. The local Government applied to the imperial Government, but there too the appeal was not quite successful. They then thought proper to apply to the Municipality, but the Municipality replied that they had no power to make a grant for such a purpose. He should not be surprised, if this clause of the Bill became law, that the same application would be

renewed once more, and the first item of additional expenditure would perhaps be the re-construction of the Medical College Hospital. He need hardly remind the Council that this hospital was an imperial institution, and was maintained out of imperial or provincial revenues. It would in fact be relieving the imperial or provincial revenues at the expense of the Municipality if such a provision as this were inserted in the Bill, and such a charge thrown upon the municipal fund.

The next case was the item of "dispensaries." The only hospital which the municipal funds were required to maintain was the Pauper Hospital, and that very properly, as the poor of the town went there, and the town bore the charge. But in this clause not only were hospitals included, but also dispensaries. Now, there were one or two dispensaries in the town which were maintained by Government, one of them being the Sookea's Street dispensary. He would not be surprised if these dispensaries were thrown upon the Municipality for support if this provision were passed. Then, under the colour of this provision, it was impossible to say how many other institutions might be thrown on the municipal funds. There was the Mayo Native Hospital. Hitherto the Justices were not called upon to support it, because the law did not permit them to apply their funds to that purpose. He did not say that the support and maintenance of hospitals and dispensaries was not a good object. But what he did maintain was this, that the municipal funds had now numerous claims of primary importance which they could not fairly meet, and an increase of burdens upon them would necessarily lead to an increase of taxation.

Next, there was the item of "registration of marriages." Here they were called upon to anticipate legislation. There was no law which now provided for the registration of marriages.

He would next turn to paragraph 2; and there he found the words "and gardens," which he thought should be omitted. Now, the municipal funds maintained public squares in the town. This section gave power to the Commissioners to make gardens and supply funds for their maintenance. Perhaps hon'ble members of Council were not aware that some time ago a move was made to throw upon the municipal fund a portion of the charges for the maintenance of the Eden Gardens. At last it was decided that the Strand Bank revenue in charge of the Port Commissioners should, as heretofore, be applied to the maintenance of the Eden Gardens. Who knew but that that question might again arise? Then, again, the Commissioners might think it desirable to open new gardens. Of course gardens were proper and desirable things, but it was a luxury which the town was not in a position to pay for. And as the Commissioners should have a discretion to apply their funds to such purposes, there would be nothing to stay that discretion.

Then he came to "public instruction." If there was any one subject more than another which commanded his sympathy, it was this. For his own part, he believed that they could not spend too much money upon public instruction. But Calcutta, he must admit, was peculiarly situated. The number of boys attending schools of all classes was about 23,000; and here they had educational institutions of all degrees, from colleges to patshalas, and the people were able

The Hon'ble Baboo Kristodas Pal.

and willing to provide for the education of their children. He found that the number of boys under 12, taken from the last census returns, was about 37,000—a large proportion of these he took to be infants—and a great number of them went to schools other than patshalas, and the patshala-going population, he found from Mr. Woodrow's annual report, came to 3,312. It would be thus seen that, exclusive of colleges and special institutions for professional instruction and higher schools, both public and private, there were nearly 3,400 boys in patshalas receiving instruction. So the poorer classes of the community were not utterly destitute of educational means for the instruction of their children. If, then, it appeared that the people were able and willing to provide sufficient education for their children, it would be wantonly taxing them again for providing additional means of education. The result would be, as in the other cases, to relieve the imperial or provincial revenues at the expense of the Municipality.

Then he came to this clause—"erection and maintenance of public halls, police stations, lock-ups, and other needful buildings." He must confess that a more indefinite provision in law had scarcely been framed than this. In the first place it said "public halls and offices." He did not believe that the hon'ble member meant that he would vote away municipal funds for the construction of offices which belonged to Government, or for the construction of halls all over the town. Then, again, "police stations." It might be thought desirable to have good houses for the accommodation of the police, but it might be more economical to pay rents than construct new buildings. Then he came to "lock-ups." It was only this year, he believed, that the Justices had voted a portion of the Fire-brigade Fund to the construction of the lock-hospital. [HIS HONOR THE PRESIDENT —That fund was at the disposal of the Government.] But if this section were passed, the construction of other lock-ups and lock-hospitals might be determined upon, and the expense would probably be thrown upon the municipal funds, and to that extent Government would again be relieved. Then, again, he would refer to the words "needful public buildings." He did not understand what those words meant. They were very vague, but at the same time they were very comprehensive. And lastly, he would come to the words "generally all objects connected with the public safety, health, and convenience." These words, again, were so comprehensive, and at the same time so vague and indefinite, that anything and everything might be included under them.

Thus a wide latitude would be given to the Commissioners to spend the public funds which would be entrusted to them. If he rightly understood the original object of the Bill, it was simply this, that it should be a purely consolidation measure. He did not know that the opportunity would also be taken to increase taxation; and there was sure to be additional taxation if these powers were conferred upon the Commissioners. It might be said that the Commissioners would be elected by the people, and they might therefore be trusted with these powers. But the Council to-day had decided that two-thirds were to be elected by the rate-payers and one-third by the Government. Besides, the power to spend money, whether by Government or representative men, ought

to be, and could not but be, too jealously guarded in this country. The vast masses would be practically unrepresented in the Corporation, though the electoral franchise went down so low as Rs. 25 a year. The hon'ble member in charge of the Bill had pointed out that this would give an electoral body of only 13,000 persons, and it should be remembered that Calcutta had a population of over 450,000. To guard against the intrusion of the very poor into the electoral board, the Select Committee had provided that "land" for the purposes of this clause should not be land including huts; that was to say, the very poor were to be excluded from the privilege of voting. He therefore submitted to the Council that they could not be too jealous in conferring upon the Commissioners the power to spend money. The Municipality was already burdened with a heavy debt. The interest and the sinking fund alone amounted to more than ten lakhs per annum, or nearly equivalent to a ten per cent. house-rate. The drainage scheme had not been completed, and its completion would cost at least thirty lakhs more. Then the water-supply was notoriously deficient to meet the every-day requirements of the people, and to double it would require another thirty lakhs, and the doubling of it would some day or another come to pass. Then there were other numerous wants of the town which had yet to be provided for. The Northern division of the town was so much intersected with narrow streets and bye-lanes, that if the Municipality had funds at their disposal they could not be better applied than to the widening of some of these narrow and tortuous lanes. Then, again, while water was considered a blessing, he believed fourteen miles of bye-lanes were still unpiped for water; and while all these pressing wants of the town remained unprovided for, they were now called upon to give power to the Commissioners to fritter away their resources upon objects of secondary importance,—perhaps of no importance at all. In the name of the poor rate-payers of the town he did protest against this clause.

The Hon'ble Sir Stuart Hogg said, as the Bill stood before, the Corporation was merely empowered to expend "money for the purposes of the Act." He had had the honor of holding his present position of Chairman of the Justices for the last ten years, and during that time there had always been a difficulty to know what were the purposes of the Act, and they had had more than once to seek for legal advice on that point, because the "purposes of the Act" were not sufficiently clearly defined. He had therefore suggested the insertion of words which would enable the Justices to declare, with the sanction of the Government, to what other purposes the municipal fund might be applied. A debate on that proposal took place in Council, and the objection taken was that the words were too vague; and he was told that if he wished to define the purposes of the Act, he must state distinctly what purposes he intended to include. Following the suggestion which had been thrown out, he had drafted the section before the Council; and he submitted that the purposes he had defined were purposes upon which the municipal funds of the town could be reasonably, properly, and beneficially expended. He did not say that there was any probability of expenditure for all these objects being required immediately. But this Act, he presumed, would be in force for many years to come,

The Hon'ble Baboo Kristodas Pal.

and it was necessary to look ahead, and to give an elective Municipality the power to expend money on such objects. It was true that the crying wants of the town were an increase of the water-supply, and also an extension of the drainage scheme. But he would submit that hand in hand with those improvements it might not be improbable that we should be called upon to expend money on other works of improvement. For instance, if great sickness prevailed in the town, it might be necessary to establish dispensaries, and dispense medicines to the poor throughout the town. In the case of the Orissa famine, the Justices had to overstep the powers given to them by the Act, and expend money in providing hospitals. We must look forward, then, to the possible requirements of the town, and also such exceptional contingencies, and give the Municipality power to expend money when the requirements of the town demanded that they should do so on legitimate purposes which fairly came within the terms "public safety, health, and convenience." Exception had been taken to the clause providing for the erection and maintenance of public halls, offices, police stations, lock-ups, and other needful buildings. The Justices had now to maintain the Town Hall, and they had spent large sums upon its repair; and they had to erect a Municipal Office: and it appeared desirable to empower them to construct police stations, lock-ups, and other needful buildings which they might consider necessary. Whether the expense of repairing and keeping the Town Hall in order was within the four corners of the Act was doubtful. In the same way, although the Justices had erected a Municipal Office, there was no provision in the Act to enable them to maintain it. It would be the object of the Municipality not to expend money unnecessarily, but it was necessary to state definitively and distinctly what purposes fell legitimately within the scope of municipal expenditure; and he submitted that he had not departed from the intention of the law in any way to which exception could be taken. For these reasons he objected to the amendments proposed.

The HON'BLE BABOO KRISTODAS PAL's amendments were then severally put and negatived, save that the clause relating to "public instruction" was, on his motion, omitted.

Section 18 was agreed to.

Section 19 empowered the Local Government "upon complaint" to direct the Commissioners to provide funds for carrying out the compulsory provisions of the Act, viz. the maintenance of the police, the cleansing, drainage, and conservancy arrangements of the town, and maintenance of a proper and efficient supply of water.

The HON'BLE BABOO KRISTODAS PAL said he should mention here that the section, as originally drafted, had undergone material alterations after the Bill was brought to the last stage of the deliberations of the Select Committee, and the provision then was that if the Municipal Commissioners should make default in carrying out the compulsory provisions of the law, the Government would be competent to appoint Special Commissioners to carry on the municipal administration of the town. But the section as it now stood provided that if complaint were made to Government, the Government might order the Commissioners to carry out certain duties which they might have failed to perform,

and the order of the Government should have the force and effect of a resolution passed by the Commissioners. There was a materfal difference between the provision so drafted and the provision adopted by the Select Committee. [HIS HONOR THE PRESIDENT observed that it was not proper or necessary to refer in Council to drafts prepared in Select Committee.] But the section as it now stood was open to objection in another form. It began by stating that "on complaint" made, the Local Government might do so and so. Who was to make the complaint? Was it intended that if the Chairman should make a complaint to the Government, the Government might pass such an order; or was it intended that the complaint should be made by the rate-payers? That was a most important point, and ought to be cleared up. If, as he understood, the hon'ble mover of the Bill intended that the complaint should be made by rate-payers, then BABOO KRISTODAS PAL would propose that the complaint should be made by a large body of rate-payers, say five hundred. If the section as worded were carried, and if it was intended that the Government might be moved to issue an order to the Commissioners on complaint made by the Chairman, then that would practically neutralize the spirit of the new constitution. It would be useless to give the rate-payers power to elect representatives for the administration of the town, if it would be in the power of the executive to counteract their action.

The HON'BLE SIR STUART HOGG said the intention of the section was clear. It contemplated that the Local Government might put the provision into motion on complaint of any rate-payer who chose to bring to the notice of the Government that the Commissioners had failed in carrying out any of the purposes mentioned in Section 18, that was to say, if they had failed in making adequate provision for police, conservancy, or water-supply, the Government might then order such enquiry as it thought necessary, and compel the Commissioners to perform the duties which the law declared must be performed. The power was similar to that which the Bombay Government had assumed to control the Municipal Commissioners of Bombay. And as that town had an elective system, he certainly thought the Government had properly reserved to itself such a power; for, however much the Local Government might desire to give free institutions to the Calcutta community, the Local Government would be held directly responsible for the administration of the affairs of this town, as well as of the whole province of Bengal.

HIS HONOR THE PRESIDENT said he was sure the Council would see, on consideration, that interference of the nature contemplated by Section 19 would be of rare occurrence, because it was a serious thing, when once a Municipality on a representative system had been constituted, to interfere directly with their action. Government might do so on necessity; but without some clear necessity, the Government was not likely to assume so invidious a duty. Complaints might be common enough, but he ventured to think that action on such complaints would be rare.

The HON'BLE MR. BELL considered that the Chairman should have the power, both in his public and private capacity, to make a complaint under this section; and he held that in certain cases, such as the stoppage of drainage

The Hon'ble Baboo Kristodas Pal.

works, it would be the absolute duty of the Chairman to make a representation to the Government, and get them to decide the point.

After some further conversation, the motion to make the complaint a complaint of not less than 500 rate-payers was negatived, and the section was passed as it stood.

The proposed Section 42 provided that if the Commissioners failed to provide sufficient funds to carry out the purposes of the Act, the Local Government might declare the rates and taxes to be imposed.

The HON'BLE BABOO KRISTODAS PAL said that this was the last straw which broke the camel's back. If this section passed, he would rather set his face against an elective system than vote for it in this form. The section gave power to the Local Government to modify or cancel rates which might be fixed by the Municipal Commissioners after full and mature deliberation. So long as this section should remain a part of the Statute Book, he did not know whether any independent gentlemen, with any feeling of self-respect, would care or would be willing to work for an object which would be likely to be set at nought at the pleasure of Government. The other day the Justices, after days of labor and discussion, came to the decision that a 7½ per cent. house-rate would be sufficient for the year. The Chairman was not, of course, satisfied with that decision; and as, under the present law, the Government had no power to alter the rates, the Chairman was bound to accept the decision of the Justices so long as they saw no reason to alter it. But if the Government had power, under the existing law, in the way proposed in this section, then the Chairman might have at once gone up to Government, and the rate passed might have been cancelled. It might be urged that Government would not unnecessarily exercise that power. But at the same time BABOO KRISTODAS PAL submitted, with due deference to the Government, that it would be chiefly inspired or guided by the Chairman in a matter like this. Government could not be expected to be master of those details which the Chairman, it was thought, ought to be; and in such a matter the Government would necessarily be guided by the Chairman. With every deference to his hon'ble friend who now so ably filled the office of Chairman to the Justices, he submitted that the tendency of the executive had always been to expend money, and that tendency it had been the business of the working Justices to control. That, he submitted, was a healthy policy. He thought such a state of things was good for the town—good because the Chairman, as the executive officer, might be anxious to undertake works of improvement which it might be desirable to carry out, and good because there was an independent working body of Justices to temper the excessive zeal of the Chairman; and their conduct in this way helped to preserve the much needed equilibrium. But once that power was destroyed or lost, it would come to this, that the Chairman, however reasonably he might be overruled by the Commissioners, would have only to appeal to the Government; and as the representative of the Government, he would in nine cases out of ten be likely to be supported by it. Such being the tendency of this section, he was sorry he could not support it; and he was compelled to say that, if it were carried, it would defeat the very object for which His Honor so laudably sought.

The HON'BLE SIR STUART HOGG said he regretted that the hon'ble member was unable to accept the proposed section. For it must be clear that, if Government considered it necessary to reserve to itself the right of general control, as provided for by Section 19, it logically followed that when Government required certain works to be performed, it should be in a position to place the Municipality in funds to carry out the orders it had received. If they omitted this section as proposed by the hon'ble member, the result would be this:—Government would issue an order on the Municipality to perform a special work. The reply from the Commissioners would be, "we have no funds." They would produce their books and show that their statement was correct. Government would then be unable to take any further action without placing the Municipality in funds to carry out its own order. That was a state of things which the legislature should contemplate and provide for. It was true that up to the present time the Calcutta Municipality had carried out, during the past ten years, very many important works at a very large expenditure of money. It was equally true that the energy of the executive had been checked by the wisdom and moderation of the working Justices. But while it was proposed to extend these powers to their successors, yet at present the Justices were supposed to be selected for qualifications which would enable the Government to place a large power of confidence in them, which it would be impossible to place in an elective body. Unless we knew who the rate-payers would elect, and were fully certain that they would exercise a wise discretion in their election, it would be impossible to concede to them the powers the present Justices had. Such being the nature of the case, he thought it was absolutely necessary that this section should be retained. He would also remark that it gave precisely the same power as the section which the Bombay Government retained in their Municipal Act, save that the latter was much broader in its terms.

The HON'BLE MR. BELL said he thought the hon'ble member opposite (Baboo Kristodas Pal) had forgotten that, even in England, the law could compel public bodies to levy rates for carrying out objects imposed upon them by law; and the provision in this section merely gave to the Government the same power which the courts exercised over public bodies in England; and it seemed to him that, as the Municipality were heavily indebted to the Government, and the interest and sinking fund of that debt alone amounted to ten lakhs annually, there clearly must be some means by which the Government or some other body should compel the Municipal Commissioners to raise sufficient funds to meet their liabilities and carry out the purposes of their Act. Suppose, for instance, the Commissioners should reduce the house-rate to one per cent., and thus deprive themselves of funds to pay their debts, was not the Government to have some power of interference? There was no doubt that action under this section would not be unnecessarily resorted to, and that it was only intended to meet exceptional cases. He could not see any objection to the provision. Suppose the Commissioners failed to raise sufficient funds, there must be some means to compel them to do their duty. If the power was not to be lodged in the Government, the hon'ble member should suggest some other body who could better exercise that function.

The HON'BLE BABOO KRISTODAS PAL said the law provided that the interest on the debt should be the first charge on the municipal fund, and if that obligation was not discharged, the property of the Municipality was liable; so that not even the Chairman could receive his salary, or the lowest peon receive his pay, unless the interest on the debt was satisfied; and therefore there could be no apprehension on that score. He had not the slightest objection to the constitutional power exercised by the courts in England. He believed the hon'ble member would not contend that the courts and the executive authority were in the same position. Then, with regard to what had fallen from the hon'ble mover of the Bill, that the Government might not have that confidence in elected Commissioners which it now had in nominated members, he believed that the Government would not have consented to concede the privilege of election if it did not believe that the people were worthy of confidence.

HIS HONOR THE PRESIDENT said, that in reference to what had fallen from the hon'ble member (Baboo Kristodas Pal), to the effect that the Government would not have proposed an elective system unless it had much confidence in the people, it was perfectly true. When he proposed the elective system in this Council, he then had, and still had, much confidence in the rate-payers. The only question was whether one was to have that extreme degree of confidence in them, that you should entrust to them, absolutely and without control, such important interests; and he said that, considering that this was an experiment which had yet to be tried, it would be too much to ask the Government to repose in them that extreme degree of confidence. He for one had much confidence in them. Whether he had that extreme degree of confidence in them he could not say until experience had been gained. On the point of confidence, he begged to point out that these proposals, which were provisionally accepted by them that day, did in fact transfer a great deal of power, which had hitherto been possessed by the Government and the Justices, to an elective body and their representatives. Surely hon'ble members would perceive that at present the Government had no control by law over the Justices. Yet, nevertheless, the Justices appointed by Government were Government nominees, and it necessarily followed that there should be a community of sentiment and opinion between the Government and the Justices. The Justices were in a great degree part of the Government, and there was agreement between the Government and its nominees. Therefore, really the control which the Government now had was complete—the most perfect kind of control possible, inasmuch as the Justices were uncontrolled by law, but being Government nominees were in unison with the Government. Now, this Bill proposed to transfer the powers of the Justices to another body of gentlemen who were to be elected—of whom Government had no idea as to who they might be, and knew nothing of them at present. Therefore, he said, to transfer powers like that was a very great step in advance—was really a great concession—a substantial concession on the part of the Government and its officers towards the people of Calcutta. Hon'ble members would doubtless perceive that although the Government proposed to maintain a legitimate power over the Commissioners,

it must be presumed that the power would not be exercised without clear cause shown, and under extreme necessity.

It was difficult for the Government to interfere authoritatively with the action of a body of elected Commissioners. It was still more difficult to alter the decision of such a body, especially in the matter of taxation. Besides, there were certain limits in the Act beyond which neither the Government nor the Municipality could go; but within those limits the Municipality should decide, subject to an appeal to Government. The Government was not likely lightly to exercise such a power in a matter affecting the pockets of the people. He believed that every member of the Council who had experience of public affairs would see that it would be very difficult for the Government to interfere under the powers given in this section. Now, by the present system, the power was indirectly complete. By the new plan, we proposed to pass from a complete system of indirect interference, to a system of an almost exceptional interference directly, and that was a considerable transfer of power, which indicated a confidence in the rate-payers of Calcutta,—a confidence which he hoped their conduct would deserve.

The motion was then negatived, and the section passed as it stood.

On the motion of the HON'BLE SIR STUART HOGG, verbal amendments were made in sections 2, 3, 7, and 23 of the Bill, and the Secretary was instructed to make the necessary corrections throughout the Bill.

The Bill, as provisionally settled, was then ordered to be published in the Gazette, and brought up for further consideration after three weeks.

The Council was adjourned to a day of which notice would be given.

Saturday, the 12th February 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL.
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYED ASHGAR ALI DILER JUNG, C.S.I.

REGISTRATION OF POSSESSORY TITLES.

The HON'BLE MR. DAMPIER, in presenting the report of the Select Committee on the Bill for the compulsory registration of possessory titles in

His Honor the President.

revenue-paying estates and revenue-free lands, said that the title of the Bill was altered, and it now stood as a Bill to provide for the registration of revenue-paying estates and revenue-free lands, and of the proprietors and managers in possession thereof. The enacting provisions of the Bill might be divided into two portions. The first portion, ending with Part III, merely re-enacted such of the existing provisions as were now required regarding the forms of the registers and the particulars which were to be recorded in them. This part of the Bill imposed obligations on the Collector. In it the Select Committee had made but small changes, and it would be unnecessary for MR. DAMPIER to repeat what was already fully set out in the printed report in the hands of the members.

He should therefore proceed at once to the fourth Part of the Bill, which imposed obligations on the public. The heading of this Part was, "Of the Registration and Mutation of Names of Proprietors and Managers." In that Part the Committee had made most important changes, having imposed on proprietors and managers the obligation to register, not only the fact of their being in possession as proprietors and managers, but also the extent of the interest of which each proprietor and manager was in such possession. The subject of registering the extent of interest had often been under consideration, and it was taken up again by the Select Committee. The advantage which a complete registration of interests would afford could not be denied, but it had always been considered that any attempt to secure such registration would immediately entail a mass of work which would overwhelm the courts and officers concerned; that it would cause an enormous amount of harassment and vexation to those who were called upon to register, and would create an amount of litigation with which it would be impossible almost to cope. In view of the great importance of the question, the Select Committee had taken the views of practical officers on the subject. He would read extracts from letters written by three of those gentlemen. Mr. Whinfield, Collector of Burdwan, wrote:—

"I do not think the requisition to register the extent of each proprietor's share would entail a prohibitive amount of litigation on the proprietors or of labour on the Collector.

"In the vast majority of cases there is no dispute at all as to the amount of shares; and where there are disputes, it is clearly best for the proprietors to have the matter brought to issue, and settled at the earliest possible date, before the merits of the question become obscured by lapse of time. Undoubtedly, there will be an increase of litigation just at first, while existing titles are being registered, but afterwards I think this provision will tend to decrease litigation as to extent of shares, because each dispute will be nipped in the bud."

Then Mr. Stevens of Nuddea said:—

"In my opinion the utility of the Bill will be enormously increased if the Collector be required to register the extent of the interest of which each proprietor is in possession. It would certainly increase work considerably in this particular direction, but in others it would probably diminish it, provided that the Collector's decision had the effect of binding the parties until it might be reversed by a competent civil court. It would prevent co-sharers from prolonging disputes to the annoyance of their tenants, and to the general detriment of the country; and in this way, too, the labours of the police and Magistrates would be not unfrequently lightened."

That was, MR. DAMPIER thought, a most important remark. Then Mr. Lyall, writing from Eastern Bengal, said:—

"I am of opinion that the registration of the extent of the interest of each proprietor would be an unmixed gain, and that the procedure suggested in your paragraph 3 is simple and feasible, and would not cause any great increase of work.

"There are, after all, not a great many estates in which any dispute as to shares arises; and it would be a distinct gain to the owners if they could get an easy and summary decision.

"At present, when a dispute arises, it is the interest of the man who is in the right to go at once to court and have the matter settled; but he thereby throws on himself the whole *onus* of proof, and fears to go to court unless absolutely compelled.

"Under the proposed Act the Collector would make a summary inquiry in which his decision would at least nine times out of ten be correct, and thereby the party in the wrong would either be forced into court as plaintiff, or have to accept the Collector's decision.

"I have seen so much of the evils of deferred litigation that I am in favour of anything that will compel parties to settle their disputes as soon as they arise, which the plan suggested certainly would do

"Even if it be allowed that the work in the first six months would be heavy, it would soon fall off, and the law would ultimately be a great prevention of litigation."

Now, these gentlemen were very strongly in favour of the registration of the extent of shares. Another great advantage had not been mentioned in these extracts, namely the advantage to ryots in estates. We could not profess in a Bill of this sort to secure the ryots against further demands from proprietors whose names were not registered, but it would certainly be of some help in assisting ryots when they *bonâ fide* wished to know how much of their rent they ought to pay to what proprietors. As things now stood, the ryots were subjected to much doubt and harassment from the conflicting claims of their joint landlords to collect rents from them.

Let the case of an estate be supposed in which there were two joint owners, each of whom was admitted by the other to be owner of a six-annas share, the remaining four-annas share being claimed by both; and if both of them were powerful proprietors, they would both collect the portion of rent representing the disputed four annas share; many ryots who were not prepared to do battle in the courts would put up with the double payment. So that an Act under which the extent of interest should be registered, as now proposed in this Bill, would give the ryots a hand-book to which they might turn in cases of that sort. The doubting ryot would at any rate see the extent of interest for which any claiming zemindar was registered in the Collector's books. Of course afterwards disputes might be settled in the Civil Court, and the result might be different; but in the meantime the ryot would have a compass by which to steer in the actual payment of rent.

The arguments against the proposed measure were—that a vast amount of litigation, as he had already said, would be stirred up; that disputes would be forced into court which would otherwise be amicably settled in the course of time; and that this work would be fruitless, and would lead to no result, because a regular suit to establish the right would, as a matter of course, follow the summary proceeding.

The Hon'ble Mr. Dampier.

He had purposely omitted to mention one argument which had been urged in favour of the proposal, and which at first sight was immeasurably more important and more weighty than, he supposed, all the rest put together, and that was that one of the benefits of this registration of the extent of interest would be to enhance the selling value of property by tending to remove doubts as to title.

Now it was absolutely necessary that all who were considering this Bill should clearly see the exact force of that argument in all its bearings. A Bill based on that argument, and very similar to the present Bill, was framed by the Board of Revenue so long ago as 1852, and sent up to the Government of India. Sir Barnes Peacock, then a Member of the Council of the Governor-General, wrote a minute on that Bill, from which the following was an extract—

"If it is intended that any reliance shall be placed on the register by persons about to purchase lands or to lend money upon the security thereof (and unless the register is to be so used, I do not see how it can render land a surer investment for money,) I think it will be worse than useless, as it will frequently record persons to be the owners of rights which do not belong to them, and may thus be made an instrument of fraud."

The objection was this. The Bill proposed to register the possession of proprietary interests; it did not profess to bar the future assertion of rights by a person who did not appear to contest the registration of another person's name. Nor could such a Bill do so; for it might be that the rightful proprietor was not in possession, and had no right to be in possession, and therefore did not care to dispute the registration of the applicant's name by the Collector. It was immaterial to him whose name was registered as in present possession, when he, the rightful proprietor, had no right to enter into possession until some future time, so that even putting aside cases of fraud, the register would be misleading to any one who consulted it for the purpose of ascertaining how the title stood. Then it was easy to imagine that, if the register were so used, great opportunities for fraud would be given. A and B acquire an estate jointly. With the intention of defrauding C, A and B collude. A gets his name registered as proprietor in possession of the whole estate; B colluding, keeps in the background, and does not oppose the registration of A's name. Then A sells the entire estate to C, getting out of him the full value; and as soon as C attempts to take possession, B comes out of retirement and establishes his claim to one-half of the estate for which C has paid the full value to A.

Mr. Dampier had gone into detail on this matter, because, amongst the opinions given in favour of the measure, and some of them by very high officers whose opinions were entitled to the greatest respect, this argument was used without any fear being expressed as to the possibility of fraud or misleading. It must be most thoroughly understood that the registration of the extent of interest under this Bill could be nothing more than an auxiliary to assist persons in their inquiries as to titles. He considered this one of the greatest objections to the registration of the extent of interest in this way,—the fear that this danger to which he had been alluding would be lost sight of by the public.

Those were the arguments on the two sides of the question; and with all these considerations before them, the Select Committee had determined to recommend that the extent of interest be registered as well as the fact of possession. They considered that on the whole the advantages would outweigh the disadvantages of such a course.

The registration would be of possession where possession existed; but it remained to notice those cases in which no possession had been made good—in which the applicant claimed to have succeeded to a certain interest, but was opposed by some other person claiming a right in the same interest, neither party having possession. In cases of that sort in the North-Western Provinces, the Collector was allowed to try the question of right to possession summarily, and to put in possession the party whom he considered to have that right. In the Lower Provinces, however, the Committee had thought it best to let the Bill stand as it was. It provided that the question of disputed possession should not be settled by the Collector himself on a summary trial, but should be referred to the Civil Court, which would try summarily the question of right to possession, and nothing else. That decision would be open to no appeal, but would be subject to a regular suit.

There was only one provision of sufficient importance to detain the Council besides these. As the Bill was sent to the Committee, it contained a clause providing that any person required by the Act to register his name, who omitted to do it, should be what the hon'ble member opposite (Baboo Kristodas Pal) had called "outlawed;" that was to say, he should be disabled from suing for rent, or taking advantage of any law for the recovery of rent. The Select Committee had omitted that section. It was considered by the majority that the power which the Bill gave to the Collector of imposing a daily fine was sufficient; and if it was sufficient, MR. DAMPIER for one was against any such unpopular and irritating measure as debarring zemindars from exercising their legal rights.

With these remarks he begged to present the report of the Select Committee; and as the time at the disposal of Government for legislative work was running very short, and as it was desirable that, when this Bill was published for the information of the public, any remarks of hon'ble members on the subject which they might like to make should also be before the public, he would ask His Honor the President to suspend the Rules for the conduct of business, in order that the report of the Select Committee might be taken into consideration, and the clauses of the Bill be provisionally settled.

HIS HONOR THE PRESIDENT having declared the Rules suspended—

The HON'BLE MR. DAMPIER moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Sections 4 to 36 were severally agreed to.

Section 37 provided, amongst other things, that the extent of interest of proprietors and managers should be registered.

The Hon'ble Mr. Dampier.

The HON'BLE BABOO KRISTODAS PAL said, as he had ventured to suggest the propriety of embodying a provision in the Bill for the registration of shares, he desired to take this opportunity to thank his hon'ble colleagues of the Select Committee for taking that suggestion into their careful consideration and providing for such registration in the Bill. The tendency of modern legislation seemed to be to bring into record rights and interests connected with the land as much as practicable, and it was in conformity with that policy he thought it highly desirable, when registration of title was provided for in a new law, that due provision should be made for the registration of shares, that was to say, the extent of the interests of proprietors.

The hon'ble mover of the Bill had explained the advantages which such registration was calculated to produce, and BABOO KRISTODAS PAL would not therefore repeat what had already been said. But he might remark that, although the existing law did not provide for the registration of shares, practically the applications which were made for the registration of names contained generally all necessary information about the extent of the share of each proprietor. The Bill would simply sanction the registration of that which the applications for registration generally indicated. He believed that in four cases out of six there would be no dispute whatever as to the extent of shares. In those cases which might be disputed, a summary inquiry would meet all the requirements of justice for the purposes of the Act, leaving the parties to fight out the battle, if they wished, in a regular suit in the Civil Court. He was inclined to think that such a summary investigation might prevent considerable litigation. Those who were deeply interested in the land had told him that the present Bill, without permitting any registration of shares, would be simply a Bill for the benefit of the Government, and would not, in the remotest degree, benefit the public at large. The Government thought that it could not, under existing circumstances, in many cases identify the proprietors who were responsible for the performance of certain public duties, and that it was therefore necessary to compel proprietors to register their names. He admitted that it was desirable to compel registration of that kind, though he was not prepared to say that the Government was not now able to identify, or find out the parties responsible for the discharge of certain obligations to the State. Those who paid in revenue to the Collector were well known to him; and the road cess machinery had also put means in the hands of the Collector for easily finding out the persons responsible for the discharge of those duties to the State.

But it was certainly desirable to have a complete record of the proprietors having a particular interest in the land, and for that purpose the Bill was unobjectionable. At the same time, BABOO KRISTODAS PAL thought that the present was a fitting opportunity for giving the public at large—he meant the landed classes—the benefit of such a measure by allowing the registration of shares. Two objections of rather a serious character were raised to this provision. One was this, that the Collector would not have sufficient time for inquiring into disputes connected with the registration of shares. Now the hon'ble mover of the Bill had informed the Council that most of the Collectors whom he had consulted were of opinion that there was ample time for work of the kind proposed. But

the Bill did not contemplate throwing much work on the Collector. As the Bill had been framed, the Collector was required simply to record or register the shares of those persons who were in possession. But if the Collector found that there was any question of right involved, he was to refer the case to the Civil Court for summary investigation, and so, practically, much work would not be thrown on the Collector.

The second objection was that such registration would give a fictitious security of title, and people might be induced to purchase property under the fancied security which this registration would confer. The Bill distinctly declared that this registration was intended for the purposes of the Act only: but if the collateral results were what some persons apprehended, he for one thought that it ought not to lead the Council to deny the people the benefits of the law, because some collateral or incidental misapprehension might arise. When Sir Barnes Peacock, for whose opinion of course this Council could not but have the highest respect, objected to the registration of shares, the Bill, as then framed by the Board of Revenue, had a different object in view. It in fact intended to create that security of title which this Bill did not in the remotest degree aim at. The objections which Sir Barnes Peacock had taken to that Bill were certainly very cogent; but reading this Bill along with the minutes of the Board and Sir Barnes Peacock's minute on the original Bill, BABOO KRISTODAS PAL found that this Bill was not open to the objections taken to the original one.

The benefits of this measure would not extend only to zemindars; ryots would also derive material advantages from it. As already pointed out by the hon'ble mover, there were cases in which the separate management of joint estates led to great oppression to the ryots by reason of the exact extent of the respective shares of several proprietors not being known to the ryots. Now, if under this Bill the extent of the share of each proprietor were recorded, and notification issued in the villages for the information of the ryots, as BABOO KRISTODAS PAL had ventured to recommend, the ryots would know how much they were bound to pay to each sharer; and if the sharer did not receive the amount due from the ryots in proportion to his share, they would be at liberty to deposit the amount with the Collector, as under the existing law. The great disadvantage under which the ryots now labored would be removed.

So all things considered, BABOO KRISTODAS PAL humbly submitted that the registration of shares would be beneficial to the zemindars and ryots alike, whilst it would not in the least affect the interests of the Government. It might be said that if the Bill allowed proprietors to institute a regular suit in the Civil Court for the determination of their respective shares in case of dispute, why drive them to a preliminary suit, and compel them to take a decision which would not be final? Now, he admitted that there was much force in that argument. But taking human nature as it was, he was inclined to think that this preliminary suit might, in many cases, prove to be final. In fact, when the parties saw that their rights had been once determined, and that further litigation would lead only to increased expenditure, trouble, and harassment,

The Hon'ble Baboo Kristodas Pal.

in nine cases out of ten, perhaps, they would be content with the decision given by the court in the first instance. At any rate, no one could definitely say now whether this summary investigation would tend to increase of litigation. As far as he had been informed—and he had consulted some of the most experienced zemindars on the subject—they were of opinion that it would reduce litigation.

On these grounds he ventured to express a hope that the Council would agree to the clause providing for the registration of shares.

The HON'BLE MR. DAMPIER said it was desirable that this matter should be fully ventilated, and therefore, to prevent misapprehension, he ventured to lay before the Council two remarks which suggested themselves to him in the course of the hon'ble member's speech. The hon'ble member attributed to MR. DAMPIER the statement that the Collector would have ample time to try these disputed cases. He had failed to bring to the notice of the Council what was exactly said by the Collectors who were of opinion that these disputed cases should be left to revenue officers to try. They said that it must be distinctly understood that these cases must be tried by Deputy Collectors, with no appeal to the Collector. If once you allowed an appeal to the Collector from the summary investigations held by Deputy Collectors, the Collector would be flooded with work, and it would be quite impossible for him to grapple with it. If you allowed a Deputy Collector to decide summarily, then this work could be met by increasing the number of Deputy Collectors to meet any great influx of business. As an answer to that, it occurred to MR. DAMPIER that if it should be determined that the decision of these cases should be left to the revenue authorities, and not to the Civil Court, as now provided in the Bill; if the increase of original work might be met by additional Deputy Collectors, the increase of appellate work might also be met by special officers of the rank of Joint-Magistrates being appointed to try such appeals: the rush of work would be when the Act was passed, and every one now in possession came to have the extent of his interest registered.

Then, as to increase of litigation, possibly the summary trial would bring up many suits which would otherwise never have been brought into court at all; many of them would probably be of a frivolous nature, which would be preferred because the procedure would be so cheap and summary. On the other hand, it seemed to him that the decision of the Collector would prevent many cases going into court which would otherwise have formed the subject of expensive and tedious regular suits. At the same time it had been remarked that the proposed measure would have the effect of reducing the revenue derived from stamps in the shape of court fees; because, if these suits were brought in the Civil Court, these men would have to bear the cost of the proper stamps for regular suits; and under the procedure proposed, they would not be required to do so. Disputes would be referred by the Collector to the court, which would cite the proper parties before it, so that neither party would have to pay the stamp fee for the institution of the suits.

Section 37 was then agreed to, and the remaining sections of the Bill were also provisionally settled without amendment.

The Bill, as provisionally settled, was then ordered to be published in the Gazette, and was referred back to the Select Committee for the purpose of considering certain communications on the subject of the Bill which it was understood would shortly be received.

MOFUSSIL MUNICIPALITIES.

The HON'BLE MR. DAMPIER presented the report of the Select Committee on the Bill to amend and consolidate the law relating to municipalities. This Bill had been almost doubled in length in Select Committee. This was caused principally by two reasons: in the first place by the introduction of detailed municipal regulations for conservancy, and in the second place by a consolidation measure. The Committee had repealed Act XX of 1856, which was known as the old Chowkeedaree Act, and had re-enacted such of its provisions as were now extant; and the Committee had similarly repealed Act XXVI of 1850, and re-enacted it in Chapter IV. These were the causes of the increased length of the Bill.

As the Committee's report gave in considerable detail the changes made by the Select Committee, it was unnecessary for him to repeat them, and he would therefore only mention the alterations made in the form of the Bill.

The Bill had been divided into five Chapters, the first of which was preliminary and the last was general, and applied to all places to which any Part of the Bill might be extended. Chapters II, III, and IV, applied to different classes of places. Chapter II was a long one, and related to municipalities, and might now be said to take the place of the old municipalities under the District Municipal Improvement Act III of 1864, and also the old District Towns' Act VI of 1868, of this Council. These two Acts were repealed as well as all the Acts amending them, and the place of the two Acts was taken by Chapter II of this Bill, which dealt with municipalities.

Then Chapter III simply dealt with what were now called "towns," and were formerly known as old chowkeedaree unions. But Act XX of 1856 originally provided for two things—the levy of taxes for the support of town police; and secondly, for the organization of such police, who were then called "chowkeedars." Numberless Acts had since been passed which had cut Act XX of 1856 to pieces. The Police Acts had done away with all the sections relating to chowkeedars, and had provided that the police in those places, which were known as chowkeedaree unions, should be members of the general police force. As there were several Acts on other subjects which affected other Sections of Act XX of 1856, and the amending Acts also affected other Municipal Acts in force in other places, the whole thing had become an intricate mesh, which it was desirable to reduce to simplicity.

Chapter III took the place of the old chowkeedaree unions, and it was a reproduction of Act XX of 1856, with words changed here and there; but the whole Act had been absolutely reproduced. There had been no attempt to draft these provisions as Sections were drafted in modern legislation. The only change was as to the levy of taxes: not the mode of imposing and assessing taxes, but the mode of levying them from persons who did not pay. With

regard to municipalities, the Committee had provided very careful and detailed provisions as to how taxes not paid on demand should be levied. They had made these provisions applicable for the levy of arrears of taxes in those towns which were now called chowkeedaree unions under Chapter III.

Chapter IV was similarly a reproduction of Act XXVI of 1850. That Act allowed the Lieutenant-Governor, at the request of the inhabitants of any place, to let them, so to say, tax themselves. It had not been largely made use of, but it had been found very useful for the purpose of growing railway stations and places of that sort, and the Government objected to altogether striking it out. Therefore the Committee had re-enacted it in this Chapter.

Other alterations made in the Bill were set out in the report of the Committee.

The HON'BLE MR. DAMPIER postponed the motion, which stood in the list of business, for the consideration of the report of the Select Committee in order to the settlement of the clauses of the Bill, and moved that the report of the Committee, together with the Bill as amended, be published in the *Gazette*.

The motion was agreed to.

The Council was adjourned to Saturday, the 19th February.

Saturday, the 19th February 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

CALCUTTA MUNICIPALITY.

THE HON'BLE SIR STUART HOGG moved that the report of the Select Committee on the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE SIR STUART HOGG moved that, in the last line of Section 8, the word "fifty" be substituted for "one hundred." The object of the amendment

was to meet the views of a number of persons whose opinion was entitled to considerable weight, and who were of opinion that the qualification of having paid during the previous year Rs. 100 in rates and taxes, in order to entitle a person to be a Commissioner under the new Bill, was too high, and might debar many eligible candidates from coming forward. And, therefore, to meet the objection, it was proposed to reduce the property qualification from Rs. 100 to Rs. 50.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, as Section 12 was drafted, it seemed doubtful whether the power of the Government to make rules for the election of Municipal Commissioners was not too restricted. He therefore moved that the third clause of Section 12 be omitted, and the following substituted for it :—

"Votes at all elections shall be rendered by means of voting papers.

"The Local Government may from time to time make rules, not being inconsistent with this Act, for the purpose of regulating all matters connected with such elections, and the result of all elections shall be published in the *Calcutta Gazette*."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, when the Bill was drafted, it was the intention that the Government should lay down rules on all matters in any way connected with the recording of votes and the qualification for voting, and to decide in which ward persons paying rates for property situated in different wards should vote. It was proposed to lay down by legislation that the Chairman of the Commissioners should in each case, at the time of registering the title to vote, decide in which ward a voter was entitled to vote, and that the Chairman should decide, as far as possible, according to the interest of the voter in the several wards. The Chairman, at the time of registering, should decide the point in communication with the voter, and the Chairman's decision should be based on consideration of the amount of interest which the voter had in each ward, so that the voter might be allowed to vote in that ward in which he was most interested as a rate-payer. SIR STUART HOGG therefore moved that the following be added to Section 13 :—

"And shall also decide in which of the wards described in the first schedule such applicant is entitled to vote

"Such decision shall not be subject to appeal.

"No person, whose name is not entered in such list at the time of the election, shall be qualified to vote, or to be elected as a Commissioner; and no person shall be entitled to vote in any other ward than that which has been allotted to him by the decision of the Chairman as aforesaid.

"The Chairman shall decide the allotment of a particular ward to a voter as far as possible according to the interest which such voter may have in the ward."

The HON'BLE BABOO KRISTODAS PAL said, he objected to the amendment. It tended to exclude a person having an interest in property situated in more than one ward from voting in more than one of those wards. No one was better aware than the members of this Council that in England, where the privilege of electing members of Parliament and municipal institutions had been long recognized, a person who held property in more than one town had the right of voting

for the election of the members of all the towns in which his property might lie. If, for instance, a person had property in London and Birmingham, he was entitled to vote for the election of members for both those places. In the same way, if a person in Calcutta had property in two or more wards, BABOO KRISTODAS PAL did not see why, if he satisfied the property qualification laid down in the Bill, he should be debarred from voting for the return of members for the different wards in which he might own property.

The HON'BLE SIR STUART HOGG said he failed to see on what principle the hon'ble member proposed that if a rate-payer had property in every ward of the town, he should be allowed to vote in every ward. SIR STUART HOGG thought the hon'ble member misunderstood the object of the amendment. The effect of the amendment would be that, if a person held a much larger amount of property in Chowringhee than in the northern division of the town, his interest would be greater in Chowringhee than in the northern division, and he would therefore vote in the Chowringhee ward. It was not left entirely to the discretion of the Chairman, for the allotment was directed to be made "as far as possible according to the interest which the voter had in a ward."

The HON'BLE MR. BELL suggested that the voter should have the option of selecting the ward in which he desired to vote; he thought a person holding property in different wards should have the right to select the ward in which he would vote.

The HON'BLE BABOO KRISTODAS PAL considered the suggestion of the hon'ble member better than the proposition in the amendment; he thought, however, that a person holding property in different wards ought to have a vote in each of such wards.

The consideration of the amendment was then postponed, and the Secretary was instructed to draft a clause, in consultation with the hon'ble mover of the Bill, on the principle above suggested.

The HON'BLE SIR STUART HOGG said that Section 18 referred to the disqualification of members.

It provided that no person should be qualified to be, or to continue to be, a member of the Committee who was, or became at the time, or during the term of his appointment or election, a bankrupt or insolvent, or who was interested (otherwise than as a shareholder in a joint-stock company) in any contract with the Corporation; and no person who was absent from Calcutta six months consecutively, or who should be sentenced to imprisonment, should be qualified to continue to be such member. The Bill laid down the number of Commissioners to be seventy-two. It had been suggested that in the event of any member of the Corporation becoming disqualified under Section 18 during that time, any act done by the Corporation would be illegal, seeing that the number would be less than 72. To provide against that technical objection, he would move to add the following proviso to this section:—

"Provided that no act of the Commissioners or their officers, or of the Commissioners in meeting, shall be deemed to be invalid by reason only that the number of the Commissioners did not amount to seventy-two at the date of the performance of such act."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, the various purposes for which the municipal taxes and rates might be expended by the Corporation under this Bill were specified in Section 18: they were nearly all the same as under the existing Act. But they had been extended by the third clause, which enabled the Corporation to defray "the cost of the construction and maintenance of hospitals and dispensaries." The wording of that clause had given rise to a good deal of hostile criticism, and there appeared to be an alarm lest it should be the intention of the Government to force on the municipality considerable expenditure on account of hospitals and dispensaries now maintained by the State. As there was no intention on the part of the Government to call upon the Corporation to bear any expenditure now borne by the State—but the words were introduced to enable the Corporation to meet any extraordinary cases that might arise—he would move that the words objected to be omitted.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, the amendment he had to move in Section 23 was merely verbal. The section laid down that the local Government should, from time to time, appoint a proper person to be Chairman of the Commissioners, and that such Chairman should be "removeable" from office by the local Government, on the recommendation of the Commissioners present at a special general meeting; that was to say, it should be within the power of the local Government to remove the Chairman on the requisition of two-thirds of the Commissioners present at a general meeting. As the words "shall be removeable" were ambiguous, and might give rise to the supposition that it would be imperative on the Government to remove the Chairman on the requisition of two-thirds of the Commissioners present at a special general meeting, he proposed to remove all ambiguity by omitting the words "shall be removeable," and substituting for them the words "may be removed."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, that by Section 25 the appointment of certain officers should be subject to the approval of the local Government. He proposed to add to the word "appointment" the words "and resolutions," and then all orders passed by the Commissioners under Section 25 would be subject to the sanction and approval of the local Government.

The HON'BLE BABOO KRISTODAS PAL said he gladly supported this amendment. Although he was on principle opposed to the extension of the powers of the Government, which would interfere with the legitimate exercise of the authority of the Commissioners, still in a matter of that kind he thought the Government ought to have a power of control. From his experience of the last twelve years, he was constrained to say that the appointments in the municipality were too frequently jobbed away by the Justices. He hoped that this power would be rightly exercised by Government so as to prevent a recurrence of the scandals of the past.

The motion was agreed to.

The HON'BLE SIR STUART HOGG moved that the words "shall reside within the town and" be inserted after the word "Vice-Chairman" in line 1, clause 2 of Section 25. All the chief officers of the municipality should, he thought, by law

be compelled to reside within the Mahratta Ditch, and not be permitted to reside in the Suburbs. Great inconvenience would be felt if the senior officers resided at a distance, and therefore, he thought, it should be laid down distinctly that all these officers should reside in Calcutta.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said the appointment of the Chairman and Vice-Chairman was made with the approval of the Government. In the case of the Chairman, the appointment rested with the Government, and in the case of the Vice-Chairman, the nomination rested with the Commissioners, subject to the approval of the Government. By Section 27 the municipality had the power from time to time to fix the allowance to be made to the Chairman and Vice-Chairman. Consequently, if the Corporation and the Government were not in accord as regards the appointment, it would be in the power of the Corporation to nullify the appointment made by Government by fixing a mere nominal salary. In order to guard against this very unlikely, but still possible, contingency, it was proposed that all the resolutions passed by the Commissioners under this section should be subject to the approval of the local Government, and he would therefore move that the following words be added to Section 27:—

"All resolutions passed by the Commissioners under this section shall be subject to the approval of the local Government."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said that the nomination to the appointment of all the officers mentioned in Section 28 rested with the Corporation, subject to the approval of the local Government; but the allowances made to these officers lay under this section exclusively in the power of the Corporation. It was proposed to make the allowances to be drawn by these officers subject to the sanction of the Government. In order to secure that object, he proposed at the end of the section to add the words:—

"All resolutions passed by the Commissioners under this section shall be subject to the approval of the local Government."

The motion was agreed to.

The Bill as settled by the Council was then ordered to be published in the *Gazette*.

MOFUSSIL MUNICIPALITIES.

The HON'BLE MR. DAMPIER moved that the Bill to amend and consolidate the law relating to municipalities be taken into consideration in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE THE ADVOCATE-GENERAL said it would be fair that he should point out at the outset his principal objection to the Bill. He agreed in the main provisions of the Bill, but his principal objection related to the definition of the word "holding," and the use of that word in the Bill. He thought it expedient that all the rate-payers should know clearly and distinctly on what principle they were to be taxed; and it was also necessary that the

officers of Government, who had to impose the tax, should have their duties clearly defined; so that no irritation, annoyance, or hardship should arise, and no injury result to the rate-payers. He therefore objected to the definition of the term "holding" as given in the Bill; and if that definition were maintained in its present shape, his objection would apply to several sections of the Bill. The assessment in Calcutta was made on houses, lands, buildings, premises, &c., on the annual value of which a tax was imposed. The assessments in the mofussil, under the Acts proposed to be abolished, were made in a somewhat arbitrary manner, which left to the Commissioners a very wide discretion; and very grave questions had arisen whether such discretion did or did not produce hardship to persons concerned, by the splitting up of premises into a great number of holdings. The term "holding" was not defined in the present Acts, but from the general scope of the Acts the Commissioners were entitled to determine what was to be a holding according to the circumstances in each case. The Act gave the Commissioners power to do that by implication, and he thought such a power undesirable. A holding was defined in this Bill to include any parcel of land, house, tank, or other immoveable property which had been separately valued for assessment, or in respect of which any person had been separately assessed, or which, in the opinion of the Commissioners, should be separately assessed, or in respect of which, in the opinion of the Commissioners, any person should be separately assessed. That was objectionable. It left it to the Commissioners to say what was a holding for the purpose of assessment. Take the case where a man possessed ten buildings comprised in and constituting one manufactory; he might then be rated on ten holdings, and a rate might be assessed on each; or he might possess a large piece of land, and the Commissioners might divide it into so many holdings. The ADVOCATE-GENERAL ventured to submit that the term "holding" should be omitted from the Bill,—a term, the meaning of which it was very difficult to define; and that the assessment should be made, as in the Calcutta Municipal Act, on houses, buildings, and lands. The hon'ble member on his right (Mr. Bell) would bear him out that many questions had arisen from this uncertainty in the law, and many complaints had been made of the injustice inflicted under the operation of the existing law.

The HON'BLE MR. BELL said that to obviate the difficulty that arose from the use of the term "holding," he had suggested an amendment which stood on the paper in his name. The difficulty, he thought, would hardly be met in the way the learned Advocate-General suggested; for this reason, that two rates were contemplated by the Bill—first, a rate on the annual value of houses and lands; and secondly, a tax on persons according to their property and circumstances. It was only in this latter case that the difficulty arose. When an assessment was made on a person according to his circumstances and property, the rate was limited to Rs. 7 a month, and you could not assess it at a higher rate. But Rs 7 a month might be a very inadequate assessment for large manufactories consisting of a number of separate buildings. Under the existing law, one holding comprised one set of premises, and it would be a case of extreme hardship if the Magistrate should assess each building in

The Hon'ble the Advocate-General.

the premises separately. To obviate the difficulty in cases of this sort, he proposed an amendment after Section 80, which would allow the Magistrate in such cases, instead of assessing the owner of the manufactory personally, according to his circumstances, to assess the property according to its rateable value. If the Council approved of that suggestion, we should be able to give a much more correct definition of the term "holding." One holding ought to comprise the whole of the houses and buildings in one premises; and if the consideration of the question was allowed to stand over, we might be able, in conjunction with the hon'ble member in charge of the Bill, to frame a more correct definition.

The HON'BLE MR. DAMPIER said that as regards one of the taxes which this Bill authorised, it seemed to him immaterial whether you defined a block of buildings as one holding or as separate holdings—he meant for the purpose of the rate according to the letting value. Such rate was to be paid by the owner of the holding, and to him it would be immaterial whether the property were entered in the assessment books as one item, or as several items. It was for convenience only that MR. DAMPIER had added the last clause to the definition of "holding" to prevent any dispute with the Commissioners as to the mode in which they wished to enter the holding in their books for such purpose.

Then there was the other tax on the occupant, not on the property; and in regard to that he admitted that the difficulty existed. It had not been yet met; and if a definition which would meet the difficulty could be drafted, he would be glad to accept it. As regards premises occupied for the purpose of a manufactory, in which there was a block of houses used for the purpose of the manufactory, the amendment proposed by the hon'ble member who had last spoken met the difficulty in the same way as MR. DAMPIER had endeavoured to meet it in the Bill in the case of Government buildings. In a town in which the assessment on occupants according to their circumstances and property was in force, even in such a town he had provided that Government holdings might be rated according to their value, and not according to the circumstances of the occupants. In the same way, his hon'ble friend's amendment proposed that blocks of buildings in such towns, used for warehouses and manufactories, should be rated according to their value, and not that the occupant should be assessed according to his circumstances and property. There might, however, be other cases which were not met by the proposed amendment, and he hoped that by the next meeting some definition of "holding" might be hit upon which would provide for such cases. He himself could not see his way to any satisfactory definition. To make the assessment, as the learned Advocate-General proposed, merely on the land and buildings, left the whole thing untouched. The difficulty was as to dividing land and buildings occupied by one person into different holdings for the purposes of assessment.

The HON'BLE THE ADVOCATE-GENERAL said he merely threw this out as a difficulty arising from the way the sections were drafted to meet the purpose of taxation, and the difficulty he felt had reference to the use of the word "holding." Where the Government was the occupier, and the tax was to be paid by the

Government, that system of leaving a discretion was guarded against. If that were so—if in the case of the Government it was fair to take the assessment on the letting or annual value of the property, it was equally fair, he thought, that in the case of a manufactory the same should be done.

His Honor the President said he understood the hon'ble mover of the Bill to say that it was not a question of assessing a whole property, but merely a question of sub-dividing it for the purposes of assessment.

The Hon'ble the Advocate-General said, if a person had three holdings, which were previously assessed separately, he might be assessed at the rate of Rs. 7 a month for each holding. Then, if he bought a parcel of land, and included it in a manufactory, and added it to the old holdings, the old holdings would be rated as before. But if he bought a little plot of land, and included it in a manufactory, the Magistrate might divide it into twenty holdings, and make him pay twenty times Rs 7 if he chose.

The Hon'ble Baboo Kristodas Pal said he believed it was not intended by this Bill to raise the limit of taxation. The hon'ble mover, in introducing the Bill, had observed that the primary object of the Bill was a consolidation of the several Municipal Acts. But if a discretion were given to the Municipal Commissioners to raise the property tax, if he might so call it, from a maximum of Rs. 7 to say Rs. 50, he would not be surprised that in many places the maximum would be imposed and great oppression would result. He need hardly remind the Council that there were many families which had been in a prosperous condition before, but which were now in decadence, but which nevertheless dwelt in large houses, their ancestral homes, for which they had a natural partiality; and if these houses were assessed at the maximum rate proposed, they would be grievously oppressed. He thought that the suggestion made by the learned Advocate-General would meet the cases he had described.

The Hon'ble Mr. Dampier said he did not distinctly see the force of the suggestion made. The difficulty appeared to him to be this. To put an extreme case, take the case of a millionaire, whose circumstances and property in the municipality were very large. Suppose the municipality was one in which the tax, according to the circumstances and property of persons, and not according to the letting value of buildings, was in force—how was the limit of Rs. 84 a year as the maximum tax on each holding to be applied in such a case? Was the entire area of land covered with buildings which the millionaire occupied in the municipality (perhaps in more than one block) to be treated as one holding only, subject to a maximum tax of Rs. 84 a year? or was it to be left optional with the Commissioners to divide it into an unlimited number of holdings, for the occupation of each of which he might be assessed up to Rs. 84 a year? At present he believed that the mode of procedure was vague, and depended upon the discretion of the local authorities; any occupant might be assessed in respect of his occupation of each separate building, if that was the view taken by the local authorities.

The Hon'ble the Advocate-General considered that the remarks made by the hon'ble mover did not dispose of the question. As the tax was levied on the millionaire as the occupier of a holding, we must have a clear conception

of what a holding was to be. If the intention was that the millionaire must be taxed at a very high rate, then a tax of Rs. 7 on his occupation would be too small. That being so, we were called upon to give such a vague definition to the word "holding" that the Commissioners might tax the millionaire at as high a rate as they thought proper. He thought such a power capricious and arbitrary. A millionaire, like any other person, should be taxed on some fixed principle and according to rule. It appeared to him that the definition of "holding" was objectionable; and as the objection seemed to apply to several portions of the Bill, he thought it right to take an early opportunity of letting the hon'ble mover know his views upon the subject. He was not prepared at present to suggest an amendment of the definition of "holding" or other suitable remedy, which would protect a rate-payer against an arbitrary assessment, which might be made if the present definition of "holding" be retained.

The HON'BLE MR. DAMPIER said the scheme of this tax was none of his own. The Bill merely continued the rough mode of assessment which was in force throughout the length and breadth of the land, and had been so for the last score of years. At the same time he admitted that this tax, if you came to look at it through a microscope, and to test it critically, was absolutely indefensible; it was a rough and crude mode of taxation, which on the whole was well adapted to the circumstances of the country; but he should be glad to improve upon it if it could be done.

The HON'BLE THE ADVOCATE-GENERAL said, then the object of his objection had wholly succeeded. He wanted to point out that the mode of assessment was wholly indefensible. The existing law had led to much inconvenience, and as we were now altering the law, why should we not improve it?

The HON'BLE MR. BELL said, he thought that separate buildings which constituted one house should be assessed as one property. He believed that was the principle which generally prevailed in the mofussil wherever this tax on circumstances was in force. He could bear testimony to what fell from the hon'ble member opposite (Baboo Kristodas Pal) with regard to large family houses being occupied by persons in very reduced circumstances. He had observed this particularly at Santipore, which was a very old town, and contained many very large buildings. It struck him that the town had been grievously under-assessed, and, as Magistrate of the district, he instituted a very careful inquiry into the subject. In company with the Commissioner of the division he went through the town, street after street, and found that many very large houses had been assessed at only one or two rupees a month, and the reason of that was that the owners of those houses were in reduced circumstances, and not able to pay more. He should be sorry to do anything which would enable the Magistrate to raise assessments to Rs. 50. He thought that manufactories, and places used *bond fide* for purposes of trade, should be assessed according to their letting value, and that the Council should come to the determination that one holding should include all the buildings occupied as one premises.

The HON'BLE MR. DAMPIER said that if it was the determination of the Council altogether to get rid of this old mode of taxation as too rough and

unscientific, the Bill must be entirely changed; otherwise, as the word "holding" was used throughout the Bill, merely as representing one item of taxation, whatever that item might be decided to be, he did not think it was necessary to postpone the consideration of the clauses until after the word "holding" had been precisely defined.

After some further discussion, it was determined to postpone the consideration of the question, with the view of considering the objection raised to the use of the word "holding."

Section 6 provided that in existing municipalities the taxes now imposed should continue to be levied until the Commissioners, with the sanction of the Government, should otherwise direct.

The HON'BLE BABOO JUGGADANUND MOOKERJEE thought that the order of the Commissioners under this section should be made by the Commissioners "at a meeting," and he accordingly moved an amendment to that effect, which was agreed to.

Section 7 provided that the extension of certain provisions of the Act should be made by notification in the *Calcutta Gazette.* On the motion of the HON'BLE MR. DAMPIER the words "and in the manner prescribed in Section 348," which was the section providing for the publication of notices and orders, were inserted after the words "*Calcutta Gazette.*"

Section 8 provided that the notification above referred to should define the limits of the municipality, and whether the same should be a first or a second class municipality.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the following proviso at the end of the section:—

"Provided that no village having a population of less than 1,000 souls shall be included in a first class municipality, and no village having a population of less than 500 souls shall be included in a second class municipality."

The reason of the amendment he had stated when he spoke on this Bill at the time it was read in Council. Hon'ble members were doubtless aware that great complaint prevailed in the mofussil in consequence of the inclusion of villages in municipal unions which were not able to bear the burden of municipal taxation. There were also outlying villages incorporated with municipalities which did not receive any adequate return for the taxes they paid, and the inhabitants of which were therefore sufferers by the extension of the Act to them. When he proposed that no outlying village having a population of less than 1,000 souls should be included in a first class municipality, and no village having a population of less than 500 souls should be included in a second class municipality, he meant that such villages were not in a position to bear municipal burdens. Bengal consisted chiefly of rural villages; its wants in sanitary matters were few: but the machinery for municipal administration required a large expenditure of money which many of these villages were not in a position to meet. Considering these circumstances, he submitted that the limitation proposed in a subsequent section would not obviate the objection he had taken, and he therefore hoped the amendment would be agreed to.

The HON'BLE MR. DAMPIER said the Select Committee had, in manipulating what stood as Section 13 of the Bill, very much restricted the powers of the local Government as to uniting places adjoining the central town which formed the nucleus of a municipality for the purpose of forming a municipality. They had provided that no place should be so united which lay at a greater distance than one mile from some part of the nucleus, such nucleus being a tract which contained at least the minimum number of inhabitants, and at least the minimum pressure of population on area which the Act prescribed. Further, it was provided that when any outlying place not being situated more than one mile distant was united with the nucleus, the intervening tract of country should be within the municipal union for all purposes excepting that of taxation; that was to say, if there lay half a mile of maidan with a few agricultural houses between the nucleus and the place united to it, those agricultural houses were not to be liable to taxation; but it would be possible for the municipality to expend money for making a road between the united place and the nucleus through that maidan, by which the inhabitants of the scattered agricultural houses would benefit. He did not think there was any necessity for the amendment. The amendment was that no place should be united with a first or second class municipality which had not 1,000 and 500 souls respectively. But suppose the case of a little row of shops a quarter of a mile outside the town which was the nucleus; supposing there were only 25 of these shops; they took their things into the town and supplied the town, and derived their subsistence from the town,—why should not they be included in the municipality because there were only a few houses?

The HON'BLE SIR STUART HOGG said he understood that it was agreed that the word "town" and not the expression "tract of country" should be used in the Bill. He understood that a particular town was to be taken as the nucleus of a municipality, and then, that all outlying villages might be included with it. In the original Bill the limit of distance for the inclusion of such villages was a quarter of a mile. In Committee he agreed to extend the limit to one mile, if the hon'ble mover would adopt the suggestion that some town, and not a tract of country, should be taken as the central point, with which might be included all villages within one mile distance of the town. That idea was not, he observed, carried out in the Bill as it now stood.

The HON'BLE MR. DAMPIER said he did not understand that the discussion in Select Committee was as to the substitution of the word "town" for the expression "tract of country." The definition of "tract of country" was that the area must contain the average pressure of 3,000 inhabitants to the square mile, and not less than 15,000 inhabitants in all for a first class municipality, and an average pressure of 1,000 inhabitants to the square mile, and not less than 3,000 inhabitants in all for a second class municipality, whether you called such a place a town or by any other name. Those were the conditions which the Bill required, and it was immaterial by what name you called a place which fulfilled those conditions: the limitations were the two conditions as to the pressure of population to the square mile, and the number of inhabitants in the place.

The HON'BLE SIR STUART HOGG said the Bill as it now stood was extremely indefinite. Every officer who had mofussil experience knew that injustice might be done at present by including a number of outlying villages in a municipality. He felt strongly in this matter, because he feared that in some cases injustice was sometimes done by levying high taxation from a large number of villages for whose benefit but little was ever expended. The provisions of the Bill appeared not to meet the objections he had urged in Committee, but rather to increase the evils to which he objected. He understood the hon'ble member was ready to concede the suggestions which SIR STUART HOGG had made in Committee, and on that understanding he on his part had proposed to extend the limit of a quarter of a mile to one mile.

The HON'BLE MR. DAMPIER said, as the Bill originally stood, all places which might be situated within a quarter of a mile of some other place included in a union might be included in a municipality, and we might thus have had a long string of villages situated a quarter of a mile from each other in one municipality. That the hon'ble member did not approve of; and it was agreed that no place should be brought within the limits of a union which was more than one mile from the limits of the nucleus of the municipality, and this was provided in the Bill as it now stood.

The HON'BLE THE ACTING ADVOCATE-GENERAL said it appeared to him that what the hon'ble member opposite (Sir Stuart Hogg) meant was this. Suppose you took a district that might be thickly populated in one place and thinly populated in another. By taking the whole tract of country you got the average of population required by the Bill. The hon'ble member would have no objection if that tract of country were a town, or what was known as a town. In that case, if you took a mile from the limits of the town, you would obtain a limit beyond which you could not go. But he objected to taking the limit of a mile from a "tract of country," because that tract might be composed of one town with a large number of outlying villages making up the number of inhabitants and average number of population required.

HIS HONOR THE PRESIDENT thought that what the hon'ble member wished was to substitute the word "town" for "tract of country." What the hon'ble mover of the Bill meant was that a tract of country which fulfilled certain conditions was a town; that was to say, a tract of country which contained 15,000 or 3,000 inhabitants, and had an average of population to the square mile of 1,000 or 500, was a town which it would be proper to constitute a municipality of the first or second class respectively. There would, however, be this difficulty, that some whole districts and parts of others fulfilled those conditions as regards density of population.

The HON'BLE THE ADVOCATE-GENERAL observed that the definition would be very good if it stood by itself. But the difficulty was that by this Bill you were enabled to add something to the tract of country which would greatly enlarge its area.

The further consideration of the section was then postponed.

Sections 9 to 11 were agreed to.

Section 12 provided that no tract of country should be declared a municipality unless "a majority" of the adult male population were "chiefly" employed in pursuits other than agricultural; and Section 13 provided that no place "a majority" of whose adult male residents were not "chiefly" engaged in pursuits other than agricultural, should be united with a tract of country for the purpose of forming a municipality.

The HON'BLE BABOO KRISTODAS PAL moved the substitution in these sections of the words "three-fourths" for "a majority," and the omission of the word "chiefly." He thought it was very desirable that provision should be made in the Bill that unless three-fourths of the population of a place should be engaged in agricultural pursuits, it should not be included in a municipal union. The word "chiefly" limited the sense in which the provision was intended to be understood. Now, it was well known that the people in rural villages in that period of the year in which there was no agricultural work going on occasionally engaged their time in artizan's work; and having regard to that fact, the Magistrate might come to the conclusion that these were not agricultural villages, because the people sometimes engaged themselves in other occupations: and such villages, which, properly speaking, were agricultural villages, might be included in municipal unions.

Then, with regard to Section 13, he would move the insertion of the following words at the end of the first paragraph: "Provided that no such place shall be so united which is separated by a navigable channel from the limits of a municipality." Cases had been brought to notice in which villages or places separated by a river, had been included in a municipal union. If two places separated by a navigable channel were fit to receive the benefits of municipal government, he thought they ought to be treated separately, and a separate municipal organization ought to be provided for each.

The HON'BLE MR. DAMPIER explained that, as had been said before, this part of the Bill was a reproduction of Act III of 1864 and Act VI of 1868 of this Council. Act III of 1864, the District Municipal Improvement Act, contained no limitations as to the number and class of population; the Lieutenant-Governor could extend the Act to any place he chose. Section 4 of Act VI of 1868, the District Towns Act, insisted that at least one half must be non-agricultural. The proposal before the Council was to alter the existing law, which provided a minimum of one-half, and extend the limitation to three-fourths.

The HON'BLE MR. BELL did not think the hon'ble member had shown any sufficient reason for the amendments he proposed, and he should therefore vote against them.

The HON'BLE THE ADVOCATE-GENERAL observed that the existing law was a kind of rough enactment; as we were now amending and consolidating the law, we must be more precise in our legislation. The hon'ble member opposite (Sir Stuart Hogg) had shown that the inclusion of these outlying places in municipal unions might not always be to their advantage. Seeing that the outside villages might have to bear the burden of taxation without deriving any benefit in return, he thought the hon'ble mover of the amendment was perfectly right in proposing to enlarge the limit of the non-agricultural element in

places which might be united for the purpose of forming municipal unions. He did not see that there was any further reason required.

The HON'BLE BABOO KRISTODAS PAL, in reply to what had fallen from the hon'ble member opposite (Mr. Bell), had only to say that the admissions made in the Council that day sufficiently justified the amendments he had proposed. It was admitted that the municipal law had worked most unjustly, and it was therefore both necessary and meet to relieve the agricultural population of the burden of municipal taxation, particularly when their wants could be sufficiently met by a few simple sanitary measures, which could, he thought, be provided for from the funds raised under the Chowkeedaree Act. All officers acquainted with the practical administration of municipal matters in mofussil towns and villages were well aware that great complaints prevailed among the people of the agricultural villages on this subject; and that, he thought, was a sufficient reason that the numerical limit as to classes of population to be brought under municipal regulations should be extended, and not kept as it stood in the existing law.

The motion to substitute "three-fourths" for "a majority" was then agreed to.

The motion to omit the word "chiefly" was by leave withdrawn.

With regard to the motion that no place should be united which was separated by a navigable channel from the limits of a municipality, HIS HONOR THE PRESIDENT observed that the hon'ble member must know that in many parts of Bengal khals were just as numerous as canals were in Venice; the khal was the street and the town was the ghât.

The HON'BLE THE ADVOCATE-GENERAL said that the effect of the amendment might be to give a separate municipal organization to a place which might conveniently be united to a municipality on the other side of a khal or narrow stream, and the cost to the place so constituted into a separate municipality would be greater than if it were united to a municipality across the stream. Where places were separated by a large navigable river, such as Howrah and Calcutta were, they would never be placed under one municipality.

The motion was then put and negatived.

The HON'BLE MR. DAMPIER said this was a long Bill, and required a good deal of study; and he should be sorry if hon'ble members were entrapped into anything of which the effect was not clearly understood by them. When it was proposed that three-fourths of the population must be, so to say, non-agricultural, before a place could be declared to be a municipality, his reason for not more strenuously opposing the amendment was this, that the section referred entirely to places which were hereafter to be made municipalities, in which neither Act III of 1864 nor Act VI of 1868 were now in force. By Section 3 it was declared that every place which was now a municipality under Act III of 1864, should, until otherwise directed, be a first class municipality, and every place which was now a town under Act VI of 1868 should be a second class municipality; therefore the minimum of three-fourths which the Council had imposed would not affect such places as were now under municipal government; it would only be applied when a question came up of

bringing a place under municipal government which was not so already. Had it been otherwise, he must have advised the Government to refuse to accept the amendment, at any rate until it was ascertained how existing municipalities might be affected by it. Possibly it might turn out that many places now enjoying municipal government would be thrown back, and lose the benefits of it, if the amendment just passed were applied to them.

The HON'BLE BABOO KRISTODAS PAL must thank the hon'ble member for pointing out the section which provided for existing municipalities. When he moved the amendment in Section 12, his object was to include also existing municipalities.

The HON'BLE THE ADVOCATE-GENERAL thought that the constitution of existing municipalities should not be interfered with; if there were any municipalities which did not fulfil the conditions of the hon'ble member's amendment, they must remain as they were.

Section 14 was agreed to.

Section 15 provided, amongst other things, that not more than "one-third" of the Commissioners should be persons in the service of the Government.

The HON'BLE BABOO KRISTODAS PAL moved the substitution of "one-fourth" for "one-third." He thought it would be sufficient, for the purposes of Government control, if one-fourth of the Commissioners were composed of officials, particularly as by the Bill the Government, through the Divisional Commissioners, would possess sufficient control over the proceedings of the Municipal Commissioners.

The HON'BLE MR. DAMPIER said the Bill already made a concession from the existing law. There was nothing in the existing law to restrict the Government from appointing any number of official Commissioners it might think fit. He must speak plainly here. He had given the proportion of one-third with the object of giving the Government a potential influence in cases in which it was necessary to exercise it. The object of this Act was to take baathings by the hand, and gradually to bring them up even till they reached to that perfection of municipal government which was before them in Calcutta. He could not see that it would be safe for the Government, in every place to which the Act would be applied, to deprive itself of the power of putting official pressure on the Commissioners in so teaching them how things might be done. At any rate, in some of the least advanced towns there must be reserved to Government at present a power of despotic interference with the Commissioners; therefore the proportion of one-third official Commissioners was, he thought, a fair number to allow in such municipalities.

The HON'BLE BABOO KRISTODAS PAL said he must thank the hon'ble mover for the frankness with which he had expressed his opinion; and he also thought the Government should teach the people, where they were not strong enough, to exercise the independent powers of municipal government. But the rule under comment would be of universal application; and in places, such as the suburbs of Calcutta and Howrah, or Burdwan, or Kishnagur, and other towns and places, the people of which were sufficiently advanced in education and ideas of self-government—he said that in these places, if the Government so

wished, it might, to use the words of the hon'ble mover, put on "official pressure" too much by swamping the non-official members of the Commission. He would therefore suggest that, if necessary, a line of distinction might be drawn between first and second class municipalities. In first class municipalities it might be generally taken for granted that the people were intelligent and advanced, and able to perform the duties assigned to them; but in second class municipalities the people might require the assistance of the Government in learning the art of municipal government. In making this distinction between first and second class municipalities, the Government might reserve the right of nominating one-third of the Commissioners for second class municipalities, and one-fourth for municipalities of the first class. He thought such a distinction would be fair and legitimate, and if it would meet the views of the hon'ble member, he would be prepared to move an amendment to that effect.

The HON'BLE MR. DAMPIER accepted the proposal.

The motion was then agreed to.

Section 16 provided for the election of Commissioners.

The HON'BLE MR. BELL moved the introduction of the following words at the end of the section:—

"But the elective system shall not be introduced into any municipality unless the Magistrate certifies that at least one-third of the resident rate-payers have signed a petition praying for its introduction."

He thought that the Council would agree that it was not desirable to extend the elective system to any town where the inhabitants were opposed to it, or were not in its favor. And the object of the amendment was that in every case, before the elective system was extended to a town, the Government might know what the wishes of the inhabitants were. The Council would bear in mind that the clauses regarding election applied both to first and second class municipalities; and many of these second class municipalities would be remote places, where it would be impossible to know what the sentiments of the people were, except through the report of the Magistrate. It was not unlikely to suppose that a zealous and ardent-minded Magistrate might desire to signalise his term of office by asking the Government to confer the elective franchise on the town. The Government would then be on the horns of a dilemma. If the Government rejected the application, as they would probably do in most cases, on the ground that they were not satisfied that the rate-payers desired an elective municipality, the Government would lay themselves open to the reproach that in reality they were opposed to the elective system altogether; or if they acceded to the Magistrate's request, they would be forcing the elective system on the town in opposition to the wishes of the people. He thought it very reasonable to provide that if the people desired the extension of the elective system in any place, they should take the trouble of making their sentiments known: if a thing was worth having, it was worth asking for. On these grounds he asked the Council to support the amendment.

The HON'BLE MR. DAMPIER said he had no objection to the amendment; it was a mere check on the Magistrate.

His Honor the President said he rather thought, in reference to what fell from the hon'ble mover of the amendment, that if there was a serious desire on the part of the inhabitants for the extension of the elective system to their municipality, one-third of the inhabitants would make an application for its extension.

The motion was then agreed to.

Sections 17 to 20 were agreed to.

Section 21 provided as follows:—

"The Lieutenant-Governor may, on the recommendation of the Commissioners, remove any Commissioner appointed or elected under this Act, if such Commissioner shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct."

The Hon'ble Baboo Kristodas Pal moved the omission of the words "shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct," and the substitution of the following:—

"becomes a bankrupt or insolvent, or is interested otherwise than as a shareholder in a Joint-Stock Company in any contract with the Corporation, or shall be sentenced to imprisonment."

The section, as it now stood, was very indefinite. It simply provided that when a Municipal Commissioner should be guilty of any misconduct in the discharge of his duties, or of any disgraceful conduct, he might be removed. What was the meaning of "misconduct" he did not understand. "Disgraceful conduct" was also indefinite. He thought that when a person was sentenced to imprisonment he was not worthy of a seat in the Corporation; but to give power to Government to remove a person on the supposition that he was guilty of some "misconduct" not definitely described, or of "disgraceful conduct" equally indefinite, at the discretion of possibly the Magistrate or Commissioner, seemed to him a most arbitrary stretch of authority.

The Hon'ble Mr. Dampier said, in the existing sections of the two Acts there was an absolute power of removal without assigning any reason; while the Bill restricted the cases in which the Government should be able to remove a Commissioner. Objection was made to the power of removing a Commissioner on the ground that he was guilty of "disgraceful conduct." He was not personally inclined to withdraw this power from the Government, looking to the circumstances. Suppose a Commissioner was perpetually in a state which incapacitated him from taking a part in the proceedings of the Commissioners, and his conduct became a notorious scandal, surely in such cases there ought to be a power of removal.

The Hon'ble Sir Stuart Hogg said he was in favor of retaining the words of the section as they stood. It should certainly be left to the Lieutenant-Governor to remove a Commissioner who was guilty of "disgraceful conduct."

The Hon'ble Mr. Bell said he should prefer to leave the words as they stood in the existing Acts, both of which gave an absolute discretion to the Government as to the removal of a Commissioner. What was "disgraceful conduct?" It was wholly indefinite. Besides, a certain stigma would be attached to a man who was removed for disgraceful conduct. He thought it would be better therefore to retain the wording of the existing law.

The HON'BLE THE ADVOCATE-GENERAL thought that the term "disgraceful conduct" was not in any way vague or indefinite. It was very difficult in one word to define what was disgraceful conduct; it was conduct unbecoming the position of a Commissioner. The hon'ble member who had just spoken put his suggestion on the ground that it would be a stigma on a man who was removed for disgraceful conduct; but how much more would it be a stigma on a man who was removed, it might be, for nothing: if a man were removed for conduct which was known to be disgraceful, he had only himself to blame for it.

The HON'BLE BABOO KRISTODAS PAL said he would mention one case which occurred not long ago, in which a Magistrate actually suspended a Municipal Commissioner because he had some difference with the District Superintendent of Police in a procession, and though an appeal was made to the Government, no satisfaction was given to him. BABOO KRISTODAS PAL submitted that persons with any degree of self-respect would hesitate to accept the office of Municipal Commissioner if they were liable to be turned out at the discretion or caprice of the Magistrate; for the Government would necessarily be influenced by the opinion of the Magistrate. He admitted that if the Municipal Commissioners at a meeting were empowered to consider the conduct of a brother Commissioner and make a report, it would obviate the objection he had taken. Then a Commissioner whose conduct might be deemed worthy of censure would be tried by his peers as it were, and the Government would have ample grounds for exercising the authority vested in it by this section; and if the section were so amended, he would be willing to withdraw his amendment; for when the Commissioners at a meeting condemned the conduct of one of their own body, there ought to be no ground of complaint.

The HON'BLE MR. DAMPIER said he was entirely against relieving the Government of the responsibility of keeping a person who was unfit to be a Commissioner; he would make the Lieutenant-Governor himself answerable that no person who was not a proper person to be a Commissioner should be continued in the office.

The motion was then negatived.

The HON'BLE BABOO JUGGADANUND MOOKERJEE observed that the section provided that the removal of a Commissioner was to be on the recommendation of the Commissioners. That meant that the Government might remove a Commissioner on the simple recommendation of the Chairman, who, under the Bill, was empowered to exercise all the powers of the Commissioners, except those expressly declared to be exercised by the Commissioners "at a meeting." If a Commissioner committed anything like disgraceful conduct, he ought to be judged by his brother Commissioners; he thought therefore that there could be no objection to the insertion of the words "at a meeting" after the word "Commissioners," and he would move an amendment to that effect.

The HON'BLE MR. DAMPIER said he was unable to accept the amendment. He thought the actions of a Commissioner should not be brought under discussion by his fellow Commissioners; and the proposal would impose an invidious task on the persons who were Commissioners.

His Honor the President observed that it was not a proper function to be put before the Commissioners in meeting to say that one of their own body should be removed; it was most invidious to give such a power to a corporate body.

The motion was then by leave withdrawn, and the section as it stood was agreed to.

In Section 22, on the motion of the Hon'ble Mr. Dampier, the words "sentenced to imprisonment" were substituted for the words "convicted of an offence punishable with imprisonment."

Sections 23 to 29 were agreed to.

Section 30 provided that the "Commissioners" should elect their own Vice-Chairman. On the motion of the Hon'ble Baboo Juggadanund Mookerjee an amendment was carried restricting the power to the "Commissioners at a meeting."

Clause 5 of Section 30 provided as follows:—

"Provided also that the present salaried Vice-Chairman of any municipality, who has been appointed by the Lieutenant-Governor under the provisions of any enactment hereby repealed, shall continue to hold the office until he resigns or is removed with the sanction of the Lieutenant-Governor."

The Hon'ble Baboo Kristodas Pal moved the substitution of the words "as aforesaid" for the words "with the sanction of the Lieutenant-Governor" at the end of the clause. He wished to be informed whether a resolution of the Commissioners for the removal of such an officer would take effect if the Lieutenant-Governor withheld his sanction. In the early part of the section, it was provided that the Vice-Chairman might be removed if the Commissioners at a meeting voted for his removal. He thought they ought to have the power to remove any Vice-Chairman from office in case of misconduct.

The Hon'ble Mr. Dampier said this section was introduced to protect vested rights. In one or two cases officers had been appointed as Vice-Chairmen on the understanding that they would be removeable by the Government only and not by the municipal body. He believed there were only three such cases in Bengal; and it was not intended that such officers should be liable to dismissal at the discretion of the Commissioners in the same manner as other officers of municipalities might be.

The motion was then negatived, and the section agreed to.

Sections 31 and 32 were agreed to.

Section 33 vested in the Commissioners all roads, bridges, embankments, tanks, &c., within the municipality.

The Hon'ble Baboo Kristodas Pal moved the insertion of the words "and not being maintained by Government or at the public expense" after the word "property" in line 4. This section, he said, would necessarily impose heavy obligations on the municipality if all roads, bridges, and embankments now maintained by the Government, or at the public expense, were made over to the municipality. He would suggest that works so maintained should not be vested in the municipality. It was very desirable that the burden on the municipal

fund should be limited as far as possible, otherwise the primary wants of the town could not be met: the funds would be in most cases very small.

The motion was agreed to.

Sections 34 to 39 were agreed to.

Section 40 declared the mode of executing contracts.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "sanctioned by the Commissioners at a meeting, and shall be" before the words "shall be in writing" in the 9th line of the 2nd paragraph. He thought it was necessary that contracts above a certain amount should be sanctioned by the Commissioners at a meeting.

The HON'BLE MR. DAMPIER was disposed to agree that the execution of contracts above a certain amount should be made subject to the sanction of the Commissioners at a meeting, but he could not consent to the limits as they stood in the section. He did not think that the Bill would work in practice if the sanction of the Commissioners at a meeting were required for every contract of so low an amount as Rs. 300 and Rs. 100 respectively. He thought the limit must be placed at a very much higher amount. As the section stood, it required the consent of the Chairman and of at least one other Commissioner to the execution of such contracts. He thought that would be sufficient in such cases. If the hon'ble member proposed the introduction of another section requiring such sanction to contracts of a larger amount, MR. DAMPIER would endeavour to meet his views.

On the motion of the HON'BLE BABOO KRISTODAS PAL, the minimum values of contracts referred to in the section was raised from Rs. 300 for a first class municipality, and Rs. 100 in a second class municipality, to Rs. 500 and 300 respectively.

Sections 41 to 48 were agreed to.

Section 49 related to the appointment of overseers, clerks, and subordinate officers.

The HON'BLE BABOO KRISTODAS PAL moved the addition of the following proviso to the section:—

"Provided that no person shall be appointed to, or dismissed from, an office, the salary of which is more than fifty rupees per mensem, without the sanction of the Commissioners at a meeting."

The amendment which he now moved was consistent with the principle adopted in the Calcutta Municipal Bill, in which it was provided that no officer receiving a salary of more than Rs. 200 a month could be appointed or dismissed without the sanction of the Justices at a meeting. On the same principle he thought that no municipal officer whose salary was above Rs. 50 should be appointed or dismissed in the mofussil without the sanction of the Commissioners at a meeting. Officers whose salaries were below that amount might be appointed or dismissed by the Chairman of the Commissioners.

The HON'BLE SIR STUART HOGG said, he was not prepared to give the Commissioners any authority over the subordinate establishment of the municipality. The Commissioners were a consultative body only, who were to advise the Magistrate in the administration of the municipality; and the Magistrate, who

was the Chairman, should have the whole executive control of the affairs of the municipality, and it was absolutely necessary that the establishment should be exclusively under his orders.

The HON'BLE MR. DAMPIER said he entirely agreed with the remarks which had fallen from the hon'ble member who had just spoken.

The HON'BLE BABOO KRISTODAS PAL said he was rather surprised that the hon'ble member, who was the Chairman of the Calcutta Municipality, should object to the amendment when the principle on which it was based was affirmed in the Calcutta Municipal Act. He could well understand his wish to give the Chairmen of mofussil municipalities absolute power over the municipal establishments; but he demurred to the statement that the Municipal Commissioners were a consultative body, and that they were to have no control over the establishments in their pay. He submitted that if the Commissioners were to be a mere consultative body, their duty being simply to advise the Magistrate, and that the Magistrate alone was to administer all executive matters without the control of the Commissioners, then the municipal commission would be a farce. When he proposed to fix the limit of salary at Rs. 50, he considered that such a salary in the mofussil would correspond with a salary of Rs. 200 in Calcutta. If the Chairman of the Calcutta Municipality did not find himself hampered in his actions when the Justices exercised control over the establishment in so far that no officer whose salary was above Rs. 200 could be removed or appointed without the sanction of the Justices at a meeting, BABOO KRISTODAS PAL did not see why the executive of the mofussil municipalities should feel otherwise. He strongly urged the adoption of this proviso, as it would give the Commissioners an active interest in the affairs of the Municipality.

The motion was then agreed to.

Sections 50 to 57 were agreed to.

Section 58 provided a penalty on Commissioners and others being interested in contracts with the municipality, except with the consent of the Commissioners at a meeting; and Section 59 declared the questions on which a Commissioner or member of a Ward Committee was disqualified to vote.

The HON'BLE BABOO KRISTODAS PAL moved the omission of Section 58; the introduction of the following words after the word "shall" in line 2 of Section 59—"be interested directly or indirectly in any contract made with the Commissioners;" and of the following proviso at the end of the section:—

"Provided that no person shall, by reason of being a shareholder in, or a member of, any incorporated or registered company, be deemed interested in any contract entered into between such company and the Commissioners.

But no such shareholder or member shall act as a Commissioner or member of a Ward Committee in a matter relating to any contract entered into between such company and the Commissioners."

He objected to any Commissioner taking a contract from the municipality of which he was a member. He thought Section 58 would open a wide loop-hole to abuse, which perhaps it would be difficult for the Government to control, and might prove demoralizing to the Commissioners themselves. He was not aware

of there being any such power under the existing law, and he was surprised at its being introduced in this Bill. So far as it concerned the making of contracts with a joint-stock company, of which a Commissioner might be a shareholder, he did not object; and in his amendment on Section 59 he had provided for such cases. But he was strongly opposed to any power being reserved to the Commissioners for permitting a brother Commissioner to enter into a contract with the Municipality.

The HON'BLE MR. DAMPIER said the provision objected to was not in the old laws, but the idea was not his own. It was taken out of what was called the lost Municipal Bill,—the Bill passed in 1872, but not assented to by the Governor-General. The question was whether under no circumstances should a Municipal Commissioner, under special sanctions and restrictions, take a contract. It seemed to him that cases might occur in which it would be very advantageous to permit a Commissioner to take a contract. There might, for instance, be an iron foundry established within a municipality, of which the proprietor was a Municipal Commissioner; the municipality might wish to get a certain work done; and if Section 58 were not passed, they would not be able to take advantage of the foundry which was in their vicinity, but would have to get their work done at a distance at a considerable increase of expenditure. The restriction imposed, he thought, was such as to ensure a fair amount of publicity which would prevent any abuse of the law.

The HON'BLE BABOO KRISTODAS PAL observed that what the natives called "eye-shame" was so prevalent in this country, that serious abuses and corruption would result if the Commissioners were allowed to be mixed up with contracts. Such legislation would be demoralizing.

The HON'BLE SIR STUART HOGG said it might often occur in outlying stations that there might be one person who only could carry out a contract, and it would give rise to considerable inconvenience if that person, because he was a Commissioner, could not take the contract. For that reason only was the provision introduced. The contract would have to be approved by the Commissioners at a meeting, without whose sanction a Commissioner would not be able to take a contract.

After some further conversation the motion was carried.

Sections 60, 61, and 62, were agreed to.

Section 63 provided that, with the consent of "a majority" of the Commissioners, and the sanction of the Lieutenant-Governor, contributions might be made by one municipality to another.

The HON'BLE BABOO JUGGADANUND MOOKERJEE observed that this question was considered in Select Committee, and he believed it was considered necessary that the consent of "two-thirds" of the Commissioners should be obtained before any contribution under this section could be made. On an important subject like this, he thought that the consent of two-thirds of the Commissioners should be required, and he therefore moved the substitution of the word "two-thirds" for "a majority."

The motion was agreed to.

Sections 64 to 69 were agreed to.

Section 70 provided for the making of rules by the Government for regulating the powers of municipalities in respect to the expenditure of money.

The HON'BLE MR. DAMPIER said it had been suggested to him, with reference to the difficulty of obtaining professional skill in the mofussil except from the officers of the Government, that there should be a power of control and supervision reserved to the Government over large engineering works undertaken by municipalities. He would give notice of an amendment for this purpose at the next meeting of the Council.

Sections 71 to 73 were agreed to.

The HON'BLE MR. REYNOLDS said he had an amendment to move after Section 73. In the Bill as it stood, when it went before the Select Committee, there was a section numbered 59, permitting the Lieutenant-Governor to direct that the cost of maintaining clerks in the offices of the Magistrate of the district and Commissioner of the division for the audit of accounts, and the necessary correspondence relating to municipalities, should be paid rateably by the several municipalities in the district or division. He saw, on referring to the report of the Select Committee, that in accordance with the opinion of the majority of the Committee, that section had been omitted. But as the section was a very important one, and as he gathered that the Committee were not unanimous, he desired to move that the section should be restored in this part of the Bill. In the existing Act Section 13 declared that the sums leviable under the Act, after providing for various matters on which the municipal fund might be expended, should also be applied otherwise in giving effect to the purposes of the Act. That was a kind of general section, and it seemed reasonable to lay down that the cost of maintaining establishments under the Magistrate of the district and the Commissioner of the division was also a legitimate object of municipal expenditure. He thought the fairness of so applying the funds would be admitted by the Council, and he therefore proposed to restore Section 59 of the original Bill as Section 73A :—

"73A. The Lieutenant-Governor may direct that the cost of maintaining clerks or other establishments in the offices of the Magistrate of the district and of the Commissioner of the division, for the audit of accounts and the requisite correspondence connected with the purposes of this Act, shall be paid in rateable proportions from the funds of the several municipalities which may be constituted under this Act in such district or division.

"And the Commissioners of every municipality shall pay to the Magistrate of the district the sum which they may be required to pay for the purposes of this section and the last preceding section."

The HON'BLE SIR STUART HOGG said this question was fully considered by the Select Committee, and the omission of the section was carried by a majority. The hon'ble mover of the amendment wished to place on the same footing establishments maintained by a municipality for its own purposes, with those maintained by the Magistrate of the district and the Commissioner of the division for supervising purposes. The majority of the Select Committee were of opinion that all establishments required for the municipality of any place should be maintained and paid for from the municipal fund of that place; but they objected to the supervising establishments at the head-quarters of the

Magistrate and the Commissioner, which had no direct connection with the executive works of municipalities, being paid for from funds raised for municipal purposes.

The HON'BLE THE ADVOCATE-GENERAL observed that he understood that an extra clerk was kept in each Magistrate and Commissioner's office for the express purpose of supervising the work of municipalities, and if these officers had not municipal work to supervise, they would not require the services of this extra clerk; he thought therefore that there was no injustice in requiring municipalities to bear rateably the expenditure on this account.

The HON'BLE MR. BELL said that the present practice was for each municipality to contribute a certain proportion of the cost of a municipal clerk in the Magistrate's office. As a Magistrate, he had himself charge of three municipalities, and a very small sum from each municipality, Rs. 5 or Rs. 6 a month, sufficed to pay for the services of the clerk who was employed in his office exclusively for municipal work.

The HON'BLE BABOO KRISTODAS PAL said he had objected to this provision at the time the Bill was introduced, and he still held that it was not right in principle. If the principle were acknowledged in reference to municipalities, then there were other branches of the administration which ought similarly to be charged for the expense of supervision—the Registration Department for instance. The registration of assurances was conducted under a separate law, and the receipts from registration formed a distinct branch of revenue. The Registration Department was supervised by the Government; consequently the time of the establishment of the Bengal Secretariat was taken up for the work. But we were not told that the Registration Department was to contribute to the maintenance of the establishment of the Secretariat. But if municipalities were to be made to contribute to the maintenance of the establishments in the offices of the Magistrate of the district and Commissioner of the division, then why not in the Bengal Secretariat? and why should not by and bye a Municipal Secretary be appointed? He took it for granted that the Government existed for the due supervision of the different departments of internal administration; and as the Commissioner formed a part of the Government machinery, it was his duty to supervise the municipal administration of the districts under his control. The Government provided a general establishment for the discharge of work in the Commissioner's office, and that establishment ought to attend to the work of supervising the municipal administration. To authorize the Government to levy a sort of cess as it were from municipalities for the maintenance of an establishment in the Commissioner's office, would be indirectly throwing the burden of the general administration on the municipal fund. If it were admitted to-day that the establishment in the Commissioner's office should be paid for out of municipal funds, what was there to prevent its being declared that the cost of establishment of the Bengal Secretariat should be met by municipal funds for the supervision of municipal work. On these grounds he objected to the proposed section.

HIS HONOR THE PRESIDENT observed that any reference to public departments not mentioned in the Bill seemed to be slightly beyond the question.

The question merely was regarding the payment of certain clerks in the Magistrate's and Commissioner's offices. Surely the maintenance of these clerks for the work of municipalities was a fair charge on the municipal funds, and if this charge were disallowed, the principle would apply equally to all charges of the municipality being thrown on the general revenues.

The HON'BLE MR. DAMPIER observed that the line practically was drawn where the existence of an office depended mainly upon the local requirements; in such cases the pay of the incumbent of the office should be paid by the local fund.

The section was then agreed to.

Sections 74 and 75 were agreed to.

The further consideration of the Bill was then postponed.

The Council was adjourned to Saturday, the 26th instant.

Saturday, the 26th February 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

CALCUTTA MUNICIPALITY.

The HON'BLE SIR STUART HOGG said it would be in the recollection of the Council that when the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta had almost been passed through the Council with exception of the sections which gave Government a general control over the management of the municipality, His Honor the President of the Council was pleased to declare, at the sitting of the Council on the 27th of November 1875, his general opinion upon the system which should be adopted in providing a municipal constitution for the city. His Honor declared that he was prepared to concede an elective system to Calcutta as it had already been conceded to Bombay and other large towns in India. His Honor, however, in his speech, on

referring to the powers which might be exercised by the Municipal Commissioners, said:—

"Well, though I am, as I have already said, in favour of giving the Corporation as much power of self-government as may be safely possible, yet I certainly think that there are points in which the Government must retain the final authority. These points are the ordering of particular works of public utility to be executed, the levying or limiting of taxes, and the fixing of the strength of the police establishment. So, I submit, it will be necessary either to pass some general power compelling the Commissioners to obey any order they may receive from the Government, or, if that were thought to be too general—and I do not think that so wide a power need be insisted upon—then it would be sufficient to take certain particular points, such as those I have mentioned, the great works of public utility, the taxes, and the police, which may be specified as the points upon which the Municipal Commissioners must obey the orders they may receive from Government. I should suppose that such occasions would be extremely rare when Government would thus interpose."

Following therefore the lines distinctly laid down by His Honor when the Bill was re-committed with the view of reconsidering the constitutional sections in the Municipal Bill, the Select Committee, while providing for an elective system for Calcutta, provided for the control, as foreshadowed by His Honor the Lieutenant-Governor, which should be exercised by Government. Since these sections had been published, the Council had received memorials from several bodies. All these memorials seemed to appreciate an elective system provided it was not subject to Government control. He thought therefore it would be desirable if the memorials which they had received were referred back to the Select Committee, not with the view of re-opening the Bill as settled by the Council, but simply with the view of considering whether the sections which gave to Government the power of control could not be so modified as in a measure to meet the objections raised against them in the memorials. He had no doubt that if the Bill was re-committed, the Select Committee would be quite prepared to hear delegates from the various bodies who had memorialized the Government; and if the Justices of the Peace for Calcutta desired to be heard and represented by counsel before the Select Committee, probably there would be no objection raised to that. He would now move that the Bill be referred back to the Select Committee for the purpose of considering the memorials which had been received, with the view only to reporting if Sections 21, 22, and 58, which provided for the general control of the Government, could be modified, having regard to the memorials which had been received.

The Hon'ble Baboo Kristodas Pal said he desired to express his satisfaction at the course proposed by the hon'ble mover of the Bill. It had been announced at the last meeting of the Council that the Bill would be passed into law that day, but the hon'ble mover of the Bill had since thought fit to propose a re-commitment of the Bill to the Select Committee, and this proceeding, he was sure, would be gratifying to the rate-payers, who were so vitally interested in it. In describing to the Council the history of the constitutional clauses of the Bill, the hon'ble member had not, he was sorry to say, given all the facts connected with it. It was true that His Honor the President had announced on a certain day his readiness to concede an elective system to the people of Calcutta; but as the Council were aware, no discussion whatever had ensued

The Hon'ble Sir Stuart Hogg.

in the Council upon the statement which was then laid before it. The members of this Council had therefore had no opportunity to express their opinion upon the principle upon which the elective system was to be conceded to Calcutta. The Bill, or rather the statement of His Honor the President, had then, at a subsequent meeting, after the business of the Council was over, been referred to the Select Committee for consideration. There was thus no opportunity given to the Council to discuss the principle upon which the system was to be based. In Select Committee there had been considerable difference of opinion. He and his hon'ble friend opposite (Mr. Brookes) considered it their duty to record a dissent, but his hon'ble friend, the mover of the Bill, had not been pleased to refer to it even. He said that the report of the Select Committee on the amended Bill had been presented to the Council, as if the report were an unanimous one. They, the minority, had done their best to impress upon the majority their opinion that the proposed elective system, with the reservation of full power in the hands of Government, would be no boon; and he considered it his duty to state that he still adhered to that opinion.

The three memorials referred to by the hon'ble member in charge of the Bill, it was true, did not object to the principle of the elective system as a principle; but they did object to the powers reserved to the Government—powers which, in the opinion of many, would completely neutralize the spirit of the proposed constitution. The rate-payers of Calcutta could not but be grateful to His Honor the President for the liberal concession he had made in announcing that he was willing to give them the privilege of self-government; but they wanted a reality, and the question was whether the Bill, as framed by the majority of the Select Committee, gave a reality. With one voice the rate-payers had declared that it was not a reality; that it could not be a reality so long as the main spring would be in the hands of Government, and that it could not therefore be looked upon as a boon or a blessing. He fully appreciated the position in which the Government was placed in relation to the administration of municipal matters in the city. It was a foreign Government, and it must keep considerable power in its hands for the government of the capital of the empire. From its position it must be despotic to a great extent. But the question was whether elective institutions and despotism could run in parallel lines with each other. If the Government, assuming a despotic position, could not give full and complete powers to the rate-payers, the question was whether it was worth their while to accept the little measure that was proposed. He did not say that the people of Calcutta were not capable of governing themselves. Perhaps no other city in India possessed such a loyal population as this. It was true that the population was divided into sections and classes; but on the whole there was such harmony amongst them, there was such a spirit of mutual co-operation, and there was such a spirit of obedience to the law amongst them all, that he might say, if the Government had full confidence in them and reposed in them the solemn trust of administering the municipal affairs of the town, it would not be abused. But of that the Government was the best judge. The existing system, though not representative in theory, had been to a great

extent representative in fact. The Government had hitherto selected such members of the different sections of the community to be representatives in the Corporation as were considered qualified, by their intelligence, position, character, and public spirit, to take a part in the administration of the affairs of the town; and the history of that body, whatever its shortcomings in other respects, showed that its members had not been wanting in intelligence or loyalty in the discharge of their duties.

He had said that the Council had no opportunity of discussing the principle of the constitutional clauses of the Bill. He might remark that they had the strange spectacle of seeing the Bill in the hands of an hon'ble member who was himself opposed to its principle. Of course, from his position, it was his duty to take charge of the Bill; but that showed that there was at any rate no "community of sentiment and feeling" between His Honor the President and the hon'ble member in charge of the Bill in respect of its principle. He could not say what the opinion of the other official members of this Council on the Bill was; but, as a Government measure, he believed that they considered it their duty to support it. Such being the case, he might frankly and humbly say that he had not considered it his duty to move amendments at the last sitting of the Council, when the Bill was brought up again for consideration. He acknowledged with gratitude the patience, courtesy, and attention with which the opinions of the non-official members had been listened to both by His Honor the President and the official members of the Council. But their position was anomalous. They were a standing minority in the Council, two-thirds of the members being paid officers of Government; and considering that the present Bill was a Government measure, it could not be expected that the opinions of the non-official members would carry sufficient weight to influence the votes of the official members. These being the facts of the case, the non-official members gave it up as hopeless to persist in the amendments which they had thought it their duty to put before the Council at the previous sitting.

His hon'ble friend the mover of the Bill had announced that the Select Committee would be asked to consider some of those amendments, the principle of the Bill remaining of course as it was. BABOO KRISTODAS PAL submitted that if these sections of the Bill were modified in the spirit in which the principle of self-government had been conceded, the outside public would not have much to complain of. But he did hope that that move was not intended for a mere tinkering of the Bill—that it was not intended for slight modifications here and there, whilst the spirit of the Bill remained as it was. The public had cried out for the substance, and he hoped that a mere shadow would not be held out to them.

He had said that the rate-payers ought to feel grateful to the Government for conceding the principle of election. But the question really was not a question of election or no election, but such a management of the municipal affairs of the town as would promote the best interests of the rate-payers, consistently with their sentiments, feelings, wishes, and requirements. If that object could be secured by election, by all means give it; if by selection, by all means have it. But let that primary object be kept in view, and the

The Hon'ble Baboo Kristodas Pal.

Council would not go wrong. If they had before them that cardinal consideration that the good of the town was the object of the Bill, the Council could surely find the way to attain that object.

Much had been said outside of the importance of the elective system as proposed in the Bill. Now, the very essence of a representative system was that the representatives of the people should have sufficient power over the executive, but this Bill started with the principle that the executive should be appointed by the Government. The Chairman of the Commissioners should be the nominee and servant of the Corporation, and not in any way the representative of the Government. It was not necessary for him to say whether, under the existing circumstances of the town, the appointment of Chairman should be left to the Commissioners. But he did say that the elective system proposed was a very mitigated thing after all, when, in the appointment and dismissal of their chief executive officer, the representatives of the people would have no voice whatever. The hon'ble mover of the Bill took care, at the last sitting of the Council, to fetter still more the controlling power of the Commissioners as to the removal of the Chairman; for, though two-thirds of the Commissioners might vote for his removal, it would still be in the discretion of the Lieutenant-Governor whether the Chairman should be removed or not. Thus, the chief executive officer, who should be the spokesman of the Commissioners, being appointed without the sanction of the Commissioners, and being subject to the control only of the Government as to his removal, BABOO KRISTODAS PAL was of opinion that there, at any rate, the essence of the elective system could not be sufficiently preserved.

Then, the Government had taken power to appoint one-third of the Municipal Commissioners. He did not question the wisdom or the propriety of taking this power; but what he thought was this, that the Government was not going to concede to the town a thorough and complete elective system. It might be said that the Government kept this power lest the Corporation be swamped by Hindoos, as was urged by the hon'ble mover of the Bill at a previous stage of the Bill. But BABOO KRISTODAS PAL had already said that the Hindoos would not understand their own interests if they did so. But supposing that the rate-payers did so, the conclusion drawn from that would be that, divided as the community of Calcutta was, there was not room for a pure elective system; that the city was not ripe for one. But as he had said before, it was not likely that the Hindoo rate-payers would so far forget their interests as to swamp the Corporation with representatives of their own community; he could not too often repeat that single-handed they could not work successfully, but that united they could do a great deal.

The primary object of keeping so much power in the hands of the Government was stated to be that the Government had an enormous financial interest in the municipality of Calcutta; that it was the largest creditor of the town; and that, if the Government did not keep power in its own hands for the payment of interest and the repayment of the loan, its interests might seriously suffer. He had pointed out before, and he maintained still, that the law was sufficiently strong for the protection of the Government interests and those of

the debenture-holders generally. If the Commissioners did not make due provision for the payment of interest and contribution to the sinking fund, the Government might at any time move the High Court to compel the Commissioners to make such provision. But even if that were not sufficient, he would not object if the Government took power to itself to order the Municipal Commissioners to lay aside a sufficient sum on this account, and even to draw from the Bank of Bengal, on behalf of the Commissioners, a sufficient sum for the payment of interest on the loans and the formation of a sinking fund. If, however, he might appeal to his own experience in connection with the administration of the municipality in regard to the financial interests of the Government, he might mention one fact, that for the two years of 1873 and 1874 he believed the Government had not drawn a single pice for the sinking fund and the interest, and the Justices had had to pay up for the two years together, because the Government was not sufficiently mindful of its own interests; so that the Justices took more care of the interests of the Government than the Government itself.

The same remarks applied to the payment on account of the police. The police should certainly be maintained, and the police expenditure must be met anyhow. If the present Bill was not sufficiently stringent on that point, the power of the Government might be increased and strengthened as much as necessary for the due maintenance of the police. But he submitted that the law was quite sufficient for that purpose, and he might add that the Justices never made a default in the payment of police charges. With the exception of these two subjects, he did not see a single point in respect of which the Government should have greater power than it possessed under the existing law.

Another question was the reclamation of *bustees*, in regard to which it was said the lives and health of hundreds and thousands of the inhabitants were at stake; and in respect of that the Council were aware that the Government had taken special power. That being the case, where was the necessity for the Government to ask for more power? Where was the necessity for the Government to desire greater power of control than it did possess over the Justices at present? The great questions of drainage and water-supply had already been settled, and the Justices, or the Commissioners, had only to carry out the details. The principles in regard to those works were not open to discussion. The question, if it ever arose, simply would be whether the Justices, or the Commissioners, should expend five or ten lakhs of rupees a year on drainage, or two lakhs or ten lakhs on the water-supply, and so on. But the great principles of these works, he had already said, had been settled, and could not be re-opened. Were not the Commissioners fit to be entrusted with the settlement of details such as these? He knew that sometimes differences had arisen between the Chairman and the Justices in respect of these details, and on them hung the question of taxation. If you spent five or ten lakhs of rupees at once on the drainage or the water-supply works, you must raise the house-rate to 8 or perhaps 10 per cent. and the water-rate likewise; and the Chairman, as the executive, naturally wished that the works should be pushed on as rapidly as possible, whereas the Justices, seeing that the works, if hurried on, could not be done

The Hon'ble Baboo Kristodas Pal.

satisfactorily, made what they considered reasonable allotments for these purposes. He questioned whether it was necessary that the Government should have a voice in these matters of detail, considering that the history of the last twelve years showed that it was not necessary, in the interests of the town, that the Government should have the power of interfering with details.

But even as regards questions of principle, had the Government no power to interfere? He appealed to the records of the municipality for an answer. Did not Lord Lawrence, when Governor-General of India, interfere when the great question of drainage was under discussion? Did not Sir Cecil Beadon interfere when the question of water-supply was under discussion? Did not Lord Mayo and Sir George Campbell interfere in burdening the town with a tramway? He appealed to the Council with these facts, and asked them to consider whether the Government, under the existing system, had sufficient power of interference or not? And there was nothing in the present Bill which altered the position of the Government in that respect from what it was under the existing law. The Government, as the chief controlling authority of the country, had always a right of interfering where the good of the people was at stake, and in that respect the power of the Government could never be curtailed by local legislation.

In reference to the question of representative government for the town, there was one point of great importance. It might be said that the natives were not sufficiently advanced to be trusted with full and complete power. But it should be borne in mind that the natives were not the only residents of the town. There was also a large, important, and influential section of the European community here. The capital of the empire attracted to itself representatives of the most civilized countries of Europe for the purposes of trade and commerce. It was true that many of them came there as birds of passage, and went away after a few years, as soon as they had feathered their nests. But there were many who had an abiding interest in the town; and even those who fled away after a few years' residence, felt an interest in the municipal administration of the town as long as they dwelt there. He asked hon'ble members, who were better acquainted with the European character than he was, whether they, who had tasted the sweets of self-government in their own countries, would consent to take part in a scheme of self-government in which the power of the Government would be held *in terrorem* over them in everything they did or wished to do. He asked whether they would consent to be members of a Corporation in which the Chairman or the Government might treat them as puppets; in which, if they wished to prove useful, they could not find any scope for independence, and in which probably they would consider that they could not work without destroying their own feelings of self-respect. It then came to this, that representatives of the great European communities in Calcutta were not likely to act as a part of this machinery of self-government, and then the question arose of what use would it be to the town? He could not too strongly impress upon the Council that the Natives of the country had much to learn from the Europeans in the art of government and self-government; that if the people

of Calcutta had made any progress in the appreciation of the mode of self-government, it was because they had been long associated with the representatives of the advanced civilization of the West in their own town. Education had been diffused widely enough through towns in the mofussil; but why was it that the people of Calcutta alone were more advanced than other civilized towns in this country? It was simply because there was a large European population residing in it, between whom and the Natives there was frequent interchange of ideas. It was therefore of the utmost importance that this Bill should be so framed as to induce the representatives of the European community to join the Town Corporation, and there to act as the teachers of the people as well as the protectors of their own interests. If, then, the Government thought that it was not prepared to give such a Bill as would place full power in the hands of the representatives of the people, whether European or Native, he would say to them, "Do not go backward; if you cannot progress forward, do not make a retrograde step."

He would conclude by saying that if the Select Committee would consider the provisions of the Bill to which objections had been taken in the several memorials in the spirit in which the principle of the elective system as a principle had been conceded, they would do their work to the satisfaction of the public.

One word more and he had done. The hon'ble mover of the Bill had announced that the Select Committee would be glad to receive delegates from the public bodies from whom memorials had been received, and that if the Justices wished to be represented by counsel, the Select Committee would be prepared to hear them. He would make only one suggestion with reference to that point. Usually the proceedings of Select Committees were not open to the public; but as representatives of the various public bodies were to be admitted as delegates, and as counsel were to be heard on behalf of the Justices, he hoped that Reporters of the press would also be admitted. The public were deeply interested in the proceedings of the Council in reference to this Bill; and if the sittings of the Select Committee were thrown open to the public who were interested in the matter, it would give greater satisfaction than if the proceedings of the Committee were held with closed doors. He would therefore propose as an amendment or, if he was not in order, he would move a substantive motion, that the meetings of the Select Committee in reference to this Bill should be thrown open to the public and the Reporters of the press.

The HON'BLE SIR STUART HOGG observed that that was a question which should be left entirely for the Select Committee to determine. He himself had no objection to the proposal.

The HON'BLE THE ADVOCATE-GENERAL remarked that, as had just been said by the hon'ble mover of the Bill, delegates from public bodies would be admitted to the sitting of the Select Committee. But he should not personally object to the admission of Reporters of the press.

HIS HONOR THE PRESIDENT said he thought that matter could not be made the subject of a substantive motion in the Council. He quite agreed with the hon'ble mover of the Bill in thinking that the question of the admission of

The Hon'ble Bvboo Kristodas Pal.

the public to the sittings of the Select Committee should be left to the decision of the Committee.

The HON'BLE MR. BELL said that, before the question was put from the Chair, he should like to make one or two observations on what he conceived to be the present position of this Bill. He had listened with great attention, as he always listened with very great attention, to what had fallen from the hon'ble member opposite (Baboo Kristodas Pal), and he was sure that the Council would agree with him that they derived great advantage from the hon'ble member's opinion on all questions which were brought before them for discussion. But, though he had listened to the hon'ble member to-day with much attention, he could not very clearly make out whether the hon'ble member was in favor of the elective system or not. He understood, however, that he was in favor of an elective system, provided no restrictions were placed on the actions of the representatives of the public; at least, no such restrictions as would cause independent men to refuse to accept office. Now, he thought that it would be as well that they should consider for a moment what these supposed restrictions were. There existed, as it appeared to him, a good deal of misapprehension on the subject. When the matter came to be examined, it would be found that the control of the Government would be extremely limited. First of all there was the municipal debt; and no one, he thought, would deny that before this debt was transferred to a new body, it was the duty of the Council to see that some means were provided for securing the payment of the interest and sinking fund of the debt. This debt was held partly by Government and partly by debenture-holders. It must be remembered that when Government had advanced this money to the municipality, the municipality consisted of members appointed by itself. No security was taken from the municipality when the money was advanced, and no terms were imposed in regard to the repayment of the loan. He spoke under correction of the hon'ble member opposite (Baboo Kristodas Pal) if he was wrong. The hon'ble member had stated upon a previous occasion that the loans were a first charge upon the municipal fund. It might be so, but MR. BELL had not been able to find the section which provided for it. At any rate, debenture-holders, to judge from the form of the debentures given at the end of the Bill, had only a promise that the money should be made payable to bearer. Now, both the Government and the debenture-holders might have been very ready to lend their money upon these terms when all the members of the municipality were appointed by the Government; but, certainly, it did not follow that they would have been ready to part with their money to a body who were not appointed by the Government but by the rate-payers themselves. Therefore he thought that the first point to be considered was with reference to the debt; and he was convinced that the unanimous opinion of the Council would be that, before they handed over this debt to a new body, they were bound to provide some guarantee for the payment of the interest and the sinking fund of the debt. The hon'ble member had suggested that this might be done by a mandamus. Well, that was a point which the hon'ble member would be able to urge in Select Committee, and MR. BELL was quite sure that the Select Committee

would give the hon'ble member's suggestion their best attention. The suggestion, at any rate, admitted that, in respect of the debt, it was necessary to place the new body of Commissioners under some sort of control.

There was another point on which he held a strong opinion, and which was not provided for in the Bill as drafted in Committee, and that was in regard to the drainage works. They all knew that a large amount of money had been spent upon the drainage works, and they also knew that there was a considerable body of people who were opposed to those works. Now, he thought the Council ought to make it obligatory upon the new body to carry out to completion these drainage works, upon which so much money had been expended. He did not propose that the Government should have an arbitrary power to force the Commissioners to spend so much this year and so much the next year in carrying out these works; all that was necessary was that it should be made obligatory on the Commissioners to spend a certain sum every year for this purpose, and it was for the Select Committee to consider how this end could be best attained.

The third point was with regard to the police. The hon'ble member, whilst acknowledging that it ought to be obligatory on the new body to provide funds for defraying the expenditure on account of police, stated, if MR. BELL understood him rightly, that he would not object to give the Government power to impose a rate on the city to defray the expenditure of the police, if the Municipal Commissioners themselves refused to impose the police rate. Now, if the hon'ble member was prepared to give the Government this power, MR. BELL conceived that it was all that the Government could require.

There merely now remained the question of the conservancy of the town, and he was very pleased to hear the hon'ble member opposite say that he thought the Government had a right to interfere in this respect in the interests of the public and for the prevention of disease. It would be necessary, therefore, to provide in the Bill, in case the new body should not carry out satisfactory conservancy arrangements, some means for compelling them to do so; and he was quite sure the Council would agree with him that in a city like Calcutta it was of the most vital importance that we should have proper and suitable conservancy arrangements. If conservancy arrangements were necessary in a country like England, surely they must be doubly necessary in a town like Calcutta, where the spread of disease was so rapid and its results so fatal. He would also mention that this power of interference for the abatement of sickness and disease was a power which was constantly exercised by the Government at home. He had only that morning received a letter by the mail which gave an account of the manner in which his native town had been completely overhauled by Government engineers, who had been sent down to inspect it. There had been a great deal of sickness in the town, and the local officers had failed to carry out proper conservancy arrangements, and the Government sent down one of the engineers of the Government Board of Health, and compelled the local authorities to carry out such works as were necessary to place the town in a proper state of sanitation.

The Hon'ble Mr. Bell.

He had now gone through all the points upon which it was proposed that some control should be exercised over the new body of Commissioners; and, as far as he could see, the hon'ble member opposite agreed with him on nearly every point. The hon'ble member admitted that they must have some power of enforcing the payment of the interest and sinking fund of the debt. He also agreed that it was equally incumbent on the Commissioners to provide funds for the police; and he was willing to allow the Government to impose a police rate if the Commissioners refused to impose it. He also agreed, if MR. BELL understood him rightly, that they should provide some means for ensuring the completion of the drainage works throughout the town. The only question, therefore, that remained was the manner and extent to which the Government were to interfere, in case the new body neglected to carry out proper conservancy arrangements in the town. This would be a question for the Select Committee to consider. He was quite sure, as far as he was individually concerned, that he should approach these matters in Select Committee with the single and simple desire to promote the good of the town. He, for one, should be sorry to see any system of municipal government forced on the town, to which honorable and independent men could reasonably object to belong. He was sure that it would be the wish of every member of the Council, while giving effect to the measure which had been proposed by His Honor the Lieutenant-Governor, merely to provide such safeguards and guarantees as should ensure that the new body of elected Commissioners should faithfully discharge the obligations which the law imposed upon them.

The HON'BLE THE ADVOCATE-GENERAL said that as this matter was about to be referred to the Select Committee, he did not think it necessary to take up the time of the Council by making many remarks on the subject under discussion; he would merely point out that the objectionable clauses, as they were called, might be divided into two classes. In those cases in which a sum certain was required to be expended, he thought giving control to the Government in the manner proposed, namely to compel the Municipal Commissioners to spend that sum certain, was after all reserving to the Government no very serious control, because he assumed that every honorable body would be prepared to raise a particular amount of money which had been assigned or devoted by it to a particular purpose. He therefore ventured to assert that as far as the control related to that class of cases in which a sum certain had been arrived at for the purpose of maintaining or accomplishing a particular object, the result would be the same whether these clauses did or did not exist.

The other class of cases comprised those in which there might possibly arise a difference of opinion between the Chairman and those who were supposed to represent the Government on the one side and the elected Municipal Commissioners on the other. These were cases in which he thought that the control which was intended to be imposed might be deemed objectionable. These cases, as far as he could make out looking into the Bill itself, referred to matters of conservancy and drainage, and he could not help thinking that when these subjects came to be considered by the Select Committee, it would be possible to bring some of the cases ranging under the second class under the first. For instance,

if a sum certain was agreed to be expended for drainage, or if it was provided that the municipality should be obliged to spend not less than a certain sum of money on drainage, he apprehended that the particular case referred to would fall under the first class, and the control of the Government would not be a very serious matter. Therefore, looking at the matter carefully and not merely glancing at the surface, it would seem that the apparent force of the objections which had been made was either lost or partly incorrectly directed. With reference to the residuum of cases, namely in those few cases in which there might be a possible conflict of opinion between the Chairman and the Commissioners, the matter might be left to the Select Committee to which this Bill was about to be referred. He would not anticipate what might be done, as it had been agreed that the matter should be fully gone into, and all suggestions duly considered by a Select Committee. He could not for one single moment believe that the Government desired to arm itself with arbitrary powers, and he felt certain that even if such powers were given to the Government, they would be used in a reasonable, prudent, and honorable manner. But if the public at large desired that they should not rest satisfied with mere assurances, and believed it to be expedient that certain restrictions should be placed upon the alleged arbitrary power of the Government, he thought that the Government would be prepared to accept the imposition of fair and proper restrictions. If any restrictions could be fairly proposed, one would assume that the Select Committee would give due weight to such proposals.

It was announced by the Hon'ble President in introducing this measure, that it was not intended to adopt an elective system which would be an entirely independent one, because it was believed that at the commencement of an elective system such a course was not desirable. It was therefore necessary to begin with a system subject to some control. That proposition was clearly enunciated by the President, and to that extent the ADVOCATE-GENERAL thought His Honor was pledged by the announcement which he had made. His Honor had moreover shown an anxious and sincere desire that the objections which had been made to the Bill should be carefully considered, and so far as the Government could modify that which appeared objectionable, that modification should be made. But neither His Honor nor the Select Committee could hold out the hope that these clauses should be altogether expunged, because that would be altogether resiling from the proposition under which the elective system had originated. Even if the Government could promise to give up all control, it was very doubtful whether, having regard to the mixed classes of persons or inhabitants, consisting of various sections of society and various races, it would be possible, in giving up that control, to reconcile the different views of the various sections of the community. There were sections belonging to the Western side of the world who might have very different ideas as to what was the proper form of drainage, and as to what were proper conservancy measures, from those who always lived in this country. Having regard, then, to the diversity of the population to which the hon'ble member opposite (Baboo Kristodas Pal) had referred—and to which he had referred in that kindly spirit in which he always did when he had occasion to refer

The Hon'ble the Advocate-General.

to various members of the community,—the ADVOCATE-GENERAL thought that the resigning of all control by the Government in municipal affairs would be unfair to the community at large, taken as a whole. Moreover, he thought it would be surrendering that primary duty which the hon'ble member opposite was obliged to admit rested with the local Government. He took it as a primary duty of the Government to see to the health, comfort, and safety of the inhabitants of the town. That primary duty was, in the first instance, assigned to three Municipal Commissioners; then, when those duties became more onerous, the number was extended, and the Calcutta Justices were appointed. Now another scheme had been formed involving the introduction of an element of a different and novel character into the municipality, namely the election of representatives to a certain extent by the rate-payers in lieu of the nominees of Government. He stated that the fact of the assignment of certain duties by the Government to a corporate body did not of itself relieve the Government of the responsibility of requiring that such duties should be properly performed, and it was only in that spirit and in that sense that the Government desired to have a proper control, and in order that it might not resile from the performance of duties in which the public at large were interested. He believed that if the question under consideration were looked at in a frank and calm manner—in the manner in which it should be approached—it would be found absolutely necessary in a town like this, composed as it was, to have some control vested in the Government; but whether that control should be given in an apparently arbitrary form or should be limited, was a question which might well be considered by the Select Committee.

The hon'ble member seemed to admit that the Government had an inherent power of supervising and controlling the affairs of the municipality. If that were so, he did not see what possible objection could be made to expressing and affirming in precise terms the inherent powers which were supposed to exist. He was about to be nominated a member of the Select Committee, and he should certainly endeavour, in conjunction with the gentlemen who would be associated with him, to do his best to assist in modifying the sections objected to. Of course it was not necessary that he should anticipate all the arguments that might be brought forward. But it had been said that the point to be reached, the object to be attained by these two sections, could be effected by means of a writ of mandamus. He thought that those who reflected upon this subject would find that a mandamus in this country might be a very protracted and expensive proceeding. A mandamus in England was a much shorter remedy. Here the proceeding by mandamus commenced with a plaint to which a written statement by way of defence might be put in, and thereupon issues would have to be raised, and the case decided by a single judge, from whose decision an appeal lay to a Division Bench, from which, if the matter were of a certain value or certain importance, an appeal would lie to the Privy Council. He therefore thought that those who put forward the remedy by mandamus would do well to consider whether the circumstances of the two countries were similar, and whether there was any analogy between them.

The object that would be secured by a mandamus would be that the judgment of an independent mind would be brought to bear upon disputed facts between particular sections of the Corporation. It might be said that the decision of the Government would not be that of an independent mind. He thought, however, that the sections might be framed so as to establish some mode of enquiry which would secure some degree of independence of action. His principal object in addressing the Council was to show that the clauses objected to might clearly be split up into two classes,—one comprised cases in which it was obligatory to pay a sum certain, such as the money fixed for the police budget; and whether those clauses existed or not, it would make no difference in the manner in which the municipality would be managed with reference to the obligation to pay a certain sum of money. He believed that every hon'ble body of gentlemen, on agreeing to pay a certain sum of money for a particular purpose, would proceed to raise that sum. The other of course was a more difficult question. Questions of opinion were always more difficult, and men of every description were naturally impatient of having their opinions controverted; and when they had done their best to form a good opinion on any subject, it was very painful and galling to them to have that opinion controverted in what might be considered an unfair manner. If, then, there was some modification of these sections which might remove from the minds of those who took office under the new system, the possibility of the opinions arrived at by the body of the Municipal Commissioners being controverted in an arbitrary manner, he thought all persons would be satisfied to give the Government some power of control in lieu of the protracted, dilatory, and expensive procedure by mandamus. The local Government should have some means of remedying evils which might arise, and he thought that it would be almost hopeless to expect the Government to give up or surrender their powers of control, which, he submitted, was one of the primary duties cast upon the Government of the country.

His Honor the President said,—"Before putting the motion, I have one or two remarks to make. But after what has fallen from the hon'ble mover of the Bill, as well as from the hon'ble members on the right (Mr. Bell and the Advocate-General), I need say very little except to express my entire concurrence with the remarks which have fallen from the hon'ble members mentioned. It is perfectly true, as has been stated by all those three hon'ble members, that I never promised to give the Calcutta community an elective system without Government control, and on the 27th November last, I promised an elective system on condition of a certain limited Government control. The words which fell from me are on record. They were once quoted by me, and they have been quoted again to-day, and I need not repeat them.

The hon'ble member on the left (Baboo Kristodas Pal) probably did not intend to imply that he, and those who thought with him, had had no opportunity of fully stating their views in respect to Government control in this Council. But still it might possibly be so understood, from some of his remarks, that he, and those who thought with him, had not had that full opportunity. I need only remind the Council that on the 25th of January the Select Committee made a somewhat elaborate report, to which was appended an

The Hon'ble the Advocate-General.

equally elaborate dissent by the hon'ble member, and another hon'ble member who held the same opinions with him. That dissent was fully laid before the Council, and amongst other things it specially referred to the subject of Government control. Well, four days afterwards, on the 29th January, the whole subject of the Bill, including the details of the proposed elective system, and especially the Government control, was amongst many other things greatly debated in this Council; and on referring to the record of the debates on that occasion, I find at least two speeches by the hon'ble member on this very subject—one speech in particular on the manner in which orders were to be conveyed from the Government to the Municipality; and a second speech on the manner in which funds were to be compulsorily raised in the carrying out of those orders. So I think the whole Council were witnesses to the fact that full opportunity was afforded in this Council for a full hearing by the Council of the views of any hon'ble member who dissented from the principle of Government control. Again, the subject of the Bill was brought up for debate on the 19th February, and I presume there was nothing to prevent any hon'ble member to make any general observations on the subject of the elective system and the Government control, if he thought fit. And I might add that when the proposals of the 27th November were referred to the Select Committee, it was done by a vote of the whole Council, and I think there was nothing to prevent any member from making general observations on that subject on that occasion if he chose. But be that as it may, I hope we shall be permitted to understand that in the somewhat elaborate speech which the hon'ble member delivered to-day, he has stated his views fully to the Council on this important subject, namely the elective system and the subject of Government control.

There is one remark I must, perhaps, make in reference to the speech delivered by the hon'ble member to-day, which is that he states that the principal subjects of future municipal improvement had been already settled and decided in such a manner that they cannot be altered executively by the conduct of any Corporation that may be appointed. I cannot share his opinion on that subject. I think that without Government control it is very conceivable that these matters might be very considerably altered. But supposing he is right—and I hope he is right—and these matters have been settled, then I would remark that these are the very matters to which the Government control refers. And if they are settled so that they are not likely to be disturbed, then what real objection can he have to power being vested in the Government to prevent the chance of their being disturbed.

Lastly, I am anxious to mention one particular circumstance which may not be entirely known. From remarks which are sometimes made within the walls of the Council, it may be supposed that these controlling clauses were invented for this particular occasion. Now, would hon'ble members be surprised to hear that they are taken *verbatim* from the Acts which have been passed for Madras and Bombay? It might possibly be thought that the circumstances of Madras differ considerably from those of Calcutta, and that the Madras analogy would not apply to Calcutta. But how about Bombay? Now Bombay is at least as

large as Calcutta; its population is I believe greater than that of Calcutta, and is at least as public-spirited and as well educated, and at least as well suited for self-government. And yet it is a fact that a recent law has been passed by the local legislature in that Presidency, which allows an elective system under Government control quite as strict as, if not stricter than that which is proposed in this Bill, and that enactment having recently received the assent of the Governor-General, and passed into law, is now in full working order in that Presidency.

With these remarks, then, I desire only to add my cordial concurrence in the motion proposed by the hon'ble mover, to the effect that three particular sections of the Bill—Sections 21, 22, and 58—be again referred to the Select Committee for report. I have particular satisfaction in voting for that motion, because, after considering the memorials which have been presented to us on this subject, and particularly after having had the advantage of hearing verbally what has been stated to me by two influential deputations from different sections of the community who have been good enough to meet me, I say that I for one do believe that these three sections do admit of very considerable improvement. And I say that, if the matter shall be again considered by the Select Committee, such improvements may be effected for the consideration of the Council. But beyond that, I desire to express my entire concurrence with what has fallen from the learned Advocate-General, to the effect that though it may be possible to modify the provisions for Government control, and in some degree to meet the wishes of the memorialists and the objectors, it is impossible to abandon Government control altogether, if there is to be an elective system at all."

The Hon'ble Baboo Kristodas Pal observed that the three memorials referred to stated objections to other sections of the Bill, and enquired whether it would be competent to the Select Committee to take those sections also into consideration.

After some conversation—

His Honor the President stated that the deliberations of the Select Committee would be confined to the three sections of the Bill which were specifically mentioned in the motion of reference.

The motion was then put and agreed to, and the Hon'ble the Advocate-General, the Hon'ble Mr. Dampier, and the Hon'ble Mr. Bell were added to the Select Committee.

SETTLEMENT OF RENT DISPUTES.

On the motion of the Hon'ble Mr. Dampier, the Hon'ble Mr. Bell, the Hon'ble Baboo Ramshunker Sen, and the Hon'ble Meer Mahomed Ali were added to the Select Committee on the Bill to provide for the settlement of disputes regarding rent, and to prevent agrarian disturbances.

MOFUSSIL MUNICIPALITIES.

On the motion of the Hon'ble Mr. Dampier the Council proceeded to the further consideration of the Bill to amend and consolidate the law relating to municipalities.

His Honor the President.

Section 6, as amended at the last meeting of the Council, provided that in existing municipalities the rate on houses and lands, and the tax on persons, should be continued to be levied at the present rates "until the Commissioners at a meeting, with the sanction of the Lieutenant-Governor, shall otherwise direct."

On the motion of the HON'BLE MR. DAMPIER similar words were added to the second clause of the section, which provided for the levy of other existing taxes.

The HON'BLE MR. DAMPIER moved the substitution of the following sections for sections 10, 11, and 12 of the Bill: they were intended to meet the objection of the hon'ble member opposite (Sir Stuart Hogg) to the use of the term "tract of country," for which it was now proposed to substitute the words "town or village":—

"10. Chapters I, II, and V of this Act shall not be extended to any town or village as provided in section 7, unless the Magistrate shall have certified to the Lieutenant-Governor that three-fourths of the adult male population of such town or village are chiefly employed in pursuits other than agricultural, and that such town or village contains a number of inhabitants not being less than three thousand, and an average number of not less than one thousand inhabitants to the square mile of the area of such town or village.

11. No town or village shall be declared under section 8 to be a first class municipality unless the Magistrate shall have certified to the Lieutenant-Governor that such town or village contains at least fifteen thousand inhabitants, and an average number of not less than two thousand inhabitants to the square mile of the area of such town or village."

The HON'BLE BABOO KRISTODAS PAL observed that there was no definition of the word "town" as applied to these sections; the definition of "town" contained in the Bill was with reference to places which were now under the Chowkidaree Act. If the word were not defined, it might be taken to mean any collection of villages to which the name of "town" might be given. The District Towns' Act contemplated townships of that description; though one particular village was taken as a starting point, many agricultural villages lying between the starting point and the extreme point of the municipality might be included. For instance, two good sized villages might lie at the two ends of a municipality, and the intermediate villages might be entirely agricultural and not fit for municipal purposes. But to join these two villages together into a municipality all these villages might be included. His object in moving that three-fourths of the inhabitants should be non-agricultural, was to indicate that no place should be brought under the Municipal Act which was not really a town, and not a collection of villages, to which the name of a town might be given.

The HON'BLE MR. DAMPIER explained that, in accordance with the determination come to at the last meeting, the words "town or village" were now used instead of "tract of country," in order that fields might not be included: what was meant was a town or village in the ordinary acceptation of the term.

The HON'BLE MR. BELL said, supposing there were two contiguous towns, each containing 1,500 inhabitants. If they were contiguous towns, would they come within the definition? Take, for instance, the towns of Kanchrapara and Haleshur: they were close together and might form one municipality, if they contained the requisite number and average of population.

The HON'BLE MR. DAMPIER observed that they were discussing the formation of a nucleus, the thing which must contain at least 3,000 inhabitants and

an average of 1,000 to the square mile. Apart from these sections, there was another section which provided that you should not unite with that nucleus any place lying beyond one mile of the exterior boundary of the nucleus. Lands lying between the nucleus and the united places were not to be subject to taxation, though they would be within the municipality so far as the benefits to be derived from it went.

The HON'BLE SIR STUART HOGG said the nucleus of a municipality should be a single town, like Bankipore or Patna. He was opposed to what he understood to be the proposal of the hon'ble member in charge of the Bill—viz. that several towns or villages might be lumped together, and the average of population calculated upon the said towns and villages.

HIS HONOR THE PRESIDENT observed that he thought a town, if not otherwise defined, would be taken in the ordinary acceptation of the term, which was a congeries or collection of houses, without any intervening open space, having so many inhabitants.

After some further conversation, the proposed new sections were agreed to.

In sections 7, 8, 9, 13, and 14 the words "town or village" were substituted for "tract of country."

The HON'BLE MR. DAMPIER said that sections 58 and 59 had been amended at the last meeting on the motion of the hon'ble member opposite (Baboo Kristodas Pal). But the sections as they stood were not quite complete, and he had therefore redrafted them, embodying the principle agreed to at the last meeting, which was that under no circumstances should a Commissioner be allowed to take a contract from the municipality. The sections which he proposed to substitute for sections 58 and 59 were as follows:—

"58. No Commissioner or member of a Ward Committee shall be interested, directly or indirectly, in any contract made with the Commissioners, and if any Commissioner shall be so interested, he shall thereby become incapable of continuing in office as a Commissioner, and shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.

"Provided that no person shall, by reason of being a shareholder in, or a member of, any incorporated or registered company, be deemed interested in any contract entered into between such company and the Commissioners.

"But no such shareholder or member shall act as a Commissioner or member of a Ward Committee in a matter relating to any contract entered into between such company and the Commissioners.

"59. No Commissioner or member of a Ward Committee shall vote on any question which regards exclusively the assessment of himself, or the valuation of his property, or his liability to any tax."

The sections were agreed to.

Section 61 provided that the Commissioners should set apart a certain sum, amongst other purposes, for the payment of their own establishment and the expenses of their office. The HON'BLE MR. DAMPIER moved the addition to this clause of the following words, which were rendered necessary by the introduction of the section requiring municipalities to contribute towards the cost of the necessary establishment in the offices of the Magistrate and Commissioner of the division:—

"And for the payment of the municipal establishments entertained in the offices of the Magistrate and of the Commissioner of the division under section 73A."

The motion was agreed to.

Section 62 specified the purposes to which the municipal fund might be applied, and provided that no expenditure should be incurred for schools, hospitals or dispensaries, or the promotion of vaccination, without the sanction of "a majority" of the Commissioners at a meeting.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "not intended for the propagation of any religion" after the word "schools" in line 2 of clause 4. He said the object of his amendment was to confine the education grant to the support of such schools as would be maintained by the rate-payers themselves. It was well known to this Council that the municipal taxes were contributed by Hindus and Mahomedans. Now, there were philanthropic gentlemen who kept schools, and whose object was the propagation of Christianity; and while we ought to be grateful for their educational labours, he thought the rate-payers ought not to be made to pay for the support of schools whose primary object was the subversion of their own religion. One or two cases had lately occurred in the Suburban Municipality to which he would call the attention of the Council. A number of Hindu gentlemen had founded an English school in Bhowanipore for the benefit of the youths of that place, and a grant-in-aid was given by the local municipality for the support of the institution. But owing to certain influences at work that grant was stopped, because the school was in competition with a Christian institution in the neighbourhood. This had been mentioned to him as an illustration of the way in which missionary influence worked in the appropriation of the municipal grant to the detriment of the indigenous institutions of the country. It was not his object to discuss the educational policy of the State; but as the object of a municipal fund was to promote local purposes, and to assist local undertakings, he submitted that it could not be consistent with justice or sound policy to divert any portion of the municipal funds of mofussil towns to the support of institutions for the propagation of the Christian religion, and indirectly for the subversion of the religions of those who contributed the money.

The HON'BLE MR. DAMPIER said he did not think the words proposed should appear in the Bill. No municipal body need contribute their funds to any denominational school.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he had personal knowledge of the fact referred to by the hon'ble mover of the amendment. The Suburban Municipal Commissioners had assigned a large portion of their fund for the maintenance of schools within the municipality, and asked the District School Committee to distribute the money to the different schools, according to the requirements of each institution. It appeared that a large portion of the money so assigned was made over for the support and maintenance of girls' schools within the municipality.

The HON'BLE SIR STUART HOGG observed that the objection seemed reasonable, and unless the hon'ble mover of the Bill would suggest some other words in lieu of the words proposed, he would support the amendment.

The HON'BLE MR. BELL said he thought it was not right to limit the discretion of the Commissioners. For himself, he was totally opposed to contributions being made for the maintenance of schools of any class. He thought that no mofussil municipality had sufficient funds to provide proper conservancy arrangements, and it was most unreasonable to call upon or allow Municipal Commissioners to vote municipal funds away for educational purposes which ought primarily to be devoted to conservancy arrangements. If it was considered necessary to devote funds locally raised to the support of schools, he thought there ought to be a separate educational cess; but if funds were to be given to schools at all, he thought that the Commissioners should have full power to make grants to any schools they pleased.

The HON'BLE MR. DAMPIER would ask the Council to bear in mind the history of the question. Sir George Campbell's Bill had made it compulsory on municipalities to contribute funds towards the furtherance of primary education, and that was one of the grounds on which the Governor-General withheld his assent; but the principle of empowering municipalities to contribute towards education, if they chose to do so, met with approval.

The HON'BLE BABOO KRISTODAS PAL wished to point out, in reply to the observation made by the hon'ble mover of the Bill, that the Municipal Commissioners had no power to distribute the educational grant. The distribution was made by the District School Committee, and it was the District School Committee who had appropriated the grant in the way he had mentioned. But whether the distribution was made by the School Committee or the Commissioners, it came to the same thing. If the Magistrate was to be the guiding spirit of the municipality for many years to come, as was held by the hon'ble mover of the Bill, it entirely depended upon his sympathies whether the grant should be given to this or that institution. He had been told that the case to which he had referred had given rise to considerable discontent among the rate-payers of the Suburban Municipality. If such flagrant cases could arise in the vicinity of Calcutta, there was nothing to prevent similar proceedings in other places, and in order to guard against such cases, he thought a limitation should be prescribed as to the character of the schools to the maintenance of which municipal funds might be applied.

The HON'BLE THE ADVOCATE-GENERAL pointed out that native boys were admitted to these schools, and therefore the discretion of the Commissioners should not be limited as to the class of schools for the support of which they might devote municipal funds. He knew a number of persons who had been educated in Roman Catholic schools who had not changed their religion.

HIS HONOR THE PRESIDENT said there was no doubt that the hon'ble mover of the Bill was quite correct in reference to what the Governor-General had stated in reference to voluntary contributions by municipalities for the support of education. His Excellency said:—

"It might also, in His Excellency's opinion, be desirable to amend the present law so as to enable municipalities under Acts III of 1864 and VI of 1868 voluntarily to contribute in aid of education within their districts."

His Honor thought there would be great objection to the amendment as proposed by the hon'ble member. It was impossible to go into the question whether certain schools were intended to propagate religion; it was impossible to say whether they were or were not so intended.

The Council then divided:—

Ayes 6.	*Noes* 6.
The Hon'ble Nawab Ashgur Ali.	The Hon'ble Moulvie Meer Mahomed Ali.
" Baboo Kristodas Pal	" Mr. Brookes.
" Baboo Ramshunker Sen	" Mr. Bell.
" Baboo Juggadanund Mookerjee.	" Mr. Dampier.
" Mr. Reynolds.	" the Advocate-General.
" Sir Stuart Hogg.	His Honor the President.

The numbers being equal, the President gave his casting vote with the Noes.

So the motion was negatived.

The Hon'ble Baboo Ramshunker Sen said that in addition to the works enumerated in clause (1) of section 62, he thought provision should be made for the construction and maintenance of jetties, wells, privies, latrines, and urinals. He knew from experience that these works were much needed in mofussil municipalities, and he had therefore prepared an amendment for the purpose.

The Hon'ble Mr. Dampier accepted the proposed amendment, but considered that the wording would be improved if the following arrangement were substituted in lines 6 and 16—"roads, bridges, embankments, wharves, jetties, tanks, wells, ghâts, channels, drains, privies, latrines, and urinals, being the property of the Commissioners," and a similar arrangement of words would be necessary in section 33.

The Hon'ble Mr. Dampier's amendment was agreed to.

The Hon'ble Baboo Ramshunker Sen moved the inclusion of "squares and gardens" amongst the works which the Commissioners might construct or maintain. He thought it might, in the course of time, be very necessary to have gardens and squares in certain crowded towns such as Dacca or Patna.

The Hon'ble Baboo Kristodas Pal objected to the amendment, because, as pointed out by the hon'ble member opposite (Mr. Bell), the funds of most mofussil municipalities were very limited; and, moreover, he did not consider that gardens and squares would be legitimate objects of municipal expenditure in mofussil towns which were not so densely populated as Calcutta. He thought the list of objects on which municipal funds might be expended was sufficiently comprehensive, and in most municipalities even those objects could not be sufficiently provided for. He thought it was not wise, therefore, to give this power to the Municipal Commissioners.

The Hon'ble Mr. Bell said he was also opposed to the amendment. He thought the Commissioners had sufficient work on their hands without having anything to do with squares or gardens.

The Hon'ble the Advocate-General observed that under the Bill the Commissioners were bound to do certain things, and if they had no money

left after providing for those necessary objects, they could not expend any money upon them. But as the hon'ble mover of the amendment considered that in the course of time it would be necessary to construct squares and gardens, the ADVOCATE-GENERAL did not see any objection to the insertion of the words.

The motion was then agreed to.

The HON'BLE BABOO RAMSHUNKER SEN moved the introduction of the following clause after clause (3) of section 62; such buildings existed in some municipalities, and the necessity for them might arise in other places:—

"(3*a*) The erection and maintenance of offices, police stations, and other buildings under the control of the Commissioners."

The HON'BLE BABOO KRISTODAS PAL objected to the motion on the same ground that he had urged in opposition to the previous amendment.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he thought the amendment was unnecessary, inasmuch as all the expenditure for the maintenance and construction of police stations, &c., must be included in the regular budget, and therefore separate provision was not wanted. He thought, however, that the construction or maintenance of all these works, if separately asked for, should be sanctioned by the Commissioners at a meeting.

The HON'BLE the ADVOCATE-GENERAL observed that if the view that expenditure on these works was impliedly given was correct, then there could be no objection to their being specifically provided for.

The motion was then agreed to.

On the motion of the HON'BLE BABOO KRISTODAS PAL the words "at a meeting" were inserted after the word "Commissioners" in line 4 of section 62.

The HON'BLE BABOO KRISTODAS PAL then moved the substitution of the word "two-thirds" for "a majority" in line 43 of the same section. As the funds of the Municipal Commissioners were very limited, expenditure on account of schools, hospitals, or dispensaries should not be incurred on the vote of a bare majority of the Commissioners.

The HON'BLE the ADVOCATE-GENERAL considered that as the purposes here specified were all useful purposes, the discretion of the Commissioners should not be clogged in the way proposed.

The motion was then negatived.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the following section after section 62:—

"(62*a*) It shall be the duty of the Commissioners of a second class municipality to apply the municipal fund to the maintenance of the police, the construction and maintenance of roads and drains, and the carrying out of measures for the conservation of the health of the inhabitants generally, and not to any other purpose."

He said his object in moving this amendment was that, as second class municipalities were very poor, and had not funds sufficient to provide for their legitimate wants and requirements, the power of applying their funds to the voluntary objects indicated in the Bill ought not to be given to the Commissioners of second class municipalities. He held a paper in his hand, from which it appeared that the average income of second class municipalities, after deducting the contribution on account of police, was Rs. 250, and out of

that the Commissioners had to provide for establishments, roads, conservancy, lighting, and other charges; and if there were any surplus, they might apply it to these voluntary objects. It was quite clear that second class municipalities had not the means of carrying out these objects. In these towns the existing Act did not permit such expenditure. He found that in 1873-74 the total number of second class towns under Act VI of 1868 was 92. The total income of these 92 second class municipalities was Rs. 4,90,000. The police contributions amounted to Rs. 2,07,000, and the balance was Rs. 2,82,000. The average income left was about Rs. 3,000 per annum, or Rs. 250 per month. He would put the instance of the nearest of these second class municipalities to Calcutta, and he thought it might be considered a typical municipality, and a fairly prosperous place; he alluded to the South Suburban Municipality. He found that the total income of that municipality was Rs. 22,000, and the police contribution was Rs. 15,000, leaving a balance of Rs. 7,000, out of which Rs. 4,000 could not be collected at all, or, in other words, were bad debts. The net balance therefore was Rs. 3,000. When so limited was the income of this class of municipalities, he put it to the Council whether they should be saddled with these voluntary charges, even if two-thirds of the Commissioners should vote for them, seeing that the Commissioners could not be looked upon in the proper sense of the term as representatives of the people; the Council ought therefore to take into consideration the peculiar position and character of these municipalities, and limit their expenditure to objects of necessity only.

The Hon'ble Mr. Bell said he thought there was great danger of the Commissioners of small municipalities frittering away their money on all sorts of petty objects In the majority of cases there were not sufficient funds to devote to purposes of conservancy. But the amendment as put was very wide, and therefore he could not support it. Of all popular purposes for the expenditure of municipal funds, there was perhaps none so popular as digging tanks, or providing other means of water-supply. Another popular object was the promotion of vaccination. On both these objects the Commissioners of second class municipalities would, by this amendment as it stood, be deprived of the power of expending funds. He should be happy to support an amendment which restricted the expenditure of municipal funds to strictly necessary objects, but several necessary objects would be excluded if the amendment were carried. He would suggest that the hon'ble member should re-consider his amendment and bring it forward at another meeting.

His Honor the President thought it would be better to put the amendment as it was proposed, with permission to any hon'ble member to bring forward another amendment at a subsequent meeting.

The motion was then put and negatived.

Section 63 enabled a municipality to contribute funds to other municipalities for works calculated to benefit the inhabitants of the contributing municipality.

The Hon'ble Baboo Kristodas Pal said he strongly objected to this section on financial grounds. He submitted that if this principle were conceded—if a municipality were permitted to contribute its funds to other municipalities—

there would be no limit to taxation. For there could not be any two places the sanitary arrangements of which were not calculated to benefit one another. If this principle were admitted, then municipal taxation must be greatly enhanced. He would move the omission of the section.

The HON'BLE THE ADVOCATE-GENERAL said that he considered this section to be a very salutary provision, as it provided for those cases in which one municipality might not alone be able to undertake a particular work. The object of the section was to enable two or three municipalities to club together to achieve a common object.

The motion was put and negatived, and the section was agreed to.

Sections 64 to 67 were agreed to.

Section 68 provided for the revision of estimates of expenditure.

The HON'BLE BABOO KRISTODAS PAL moved the addition of the following proviso:—

"Provided that the provisions of sections 67 and 68 shall not be held applicable to a first class municipality, and that the orders of the Commissioners of such municipality in respect of estimates and receipts of expenditure shall be final."

He said that at present first class municipalities were not required to submit their budget estimates to the Lieutenant-Governor for sanction.

The HON'BLE MR. DAMPIER explained that this section, and the preceding one, were introduced in order to strike out the general section at the end of the Bill, giving the Commissioner of the division and the Lieutenant-Governor a general supervising authority in all matters.

The motion was negatived and the section was agreed to.

The HON'BLE MR. DAMPIER moved the introduction of the following words at the end of section 70:—

"If any work is estimated to cost above three thousand rupees, the Lieutenant-Governor may require the plans and estimates of such work to be submitted for his approval, or for the approval of any officer of Government, before such work is commenced, and may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as he may prescribe, for his approval, or for the approval of such officer of Government."

This addition was necessary, in order to give the benefit of the advice of the Government Engineers to municipalities. The Public Works Department had asked for the introduction of a special provision on the subject.

The motion was agreed to.

On the motion of the HON'BLE BABOO RAMSHUNKER SEN a verbal amendment was made in section 73.

Section 74 provided for the custody of municipal funds.

The HON'BLE BABOO RAMSHUNKER SEN moved the omission of the words "with the sanction of the Commissioner of the division" and the insertion of the words "used as a Government treasury" after the words "branch bank." His object was that no bank, either public or private, should be used as a municipal treasury, unless it was also used by Government for deposits of public money. There were in Fureedpore, Tipperah, and other places banks on the limited liability principle, in which natives were holding shares. These

might be very good institutions in their own way, but he thought that municipal funds should not be lodged in such banks, unless they were also used as Government treasuries.

The HON'BLE BABOO JUGGADANUND MOOKERJEE agreed that such a provision was very necessary.

The motion was then agreed to.

Section 75 declared the mode in which orders for the payment of money should be drawn.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "provided that such disbursement has been sanctioned by the Commissioners at a meeting." The object of the amendment was to guard against the expenditure of money by the Chairman or Vice-Chairman, which was not sanctioned in the budget, without the sanction of the Commissioners at a meeting.

The HON'BLE MR. DAMPIER moved by way of amendment the substitution for the above words of the following—

"No such order shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section 70, either by a general or special resolution."

The HON'BLE BABOO KRISTODAS PAL having withdrawn his motion, the HON'BLE MR. DAMPIER'S amendment was carried.

The further consideration of the Bill was then postponed.

The Council was adjourned to Thursday, the 2nd March 1876.

Thursday, the 2nd March 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYED ASHGAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

MOFUSSIL MUNICIPALITIES.

ON the motion of the HON'BLE MR. DAMPIER, the Council proceeded wit the further consideration of the Bill to amend and consolidate the law relatin to municipalities in order to the settlement of its clauses.

The HON'BLE MR. DAMPIER said, that having looked more carefully into the Bill with reference to the amendments which had been made, he found it necessary to move the following amendments in some of the clauses which had already been passed.

In section 49, which provided for the appointment of a Secretary and other officers, he moved the insertion of the words "Engineer or Health Officer" after the word "Secretary" in the third line. It had been brought to his notice that there were water-works in some of the more advanced municipalities which might render necessary the appointment of an Engineer in such places, and that in Howrah and the Suburbs of Calcutta the appointment of a Health Officer might be necessary.

The motion was put and agreed to.

In section 50, which provided for security to be taken from collectors of taxes or tolls, the words "and from every other officer whose duty it is to receive or expend money on behalf of the Commissioners" were inserted after the word "tolls" in the third line.

In section 62 verbal corrections were made in the amendments, which were agreed to at the last meeting.

Section 76 was agreed to.

Section 77 specified the additional taxes which might be levied in any municipality, and amongst these was the following: "(*c*) tolls on ferries and roads."

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "and roads." There was another part in another chapter of the Bill which was devoted to this subject; but he thought the principle of the tax might be discussed in connection with the clause now before them, and he therefore thought it proper to propose the amendment which he now moved. When this Bill was introduced, he took the opportunity to state that the levy of tolls on roads was open to great objection, and several hon'ble members, he believed, were of the same opinion. It was a most inconvenient and oppressive mode of taxation, led to great abuses, and was a source of constant irritation. He did not know what was the financial yield of this impost in the several municipalities which had recourse to it, but he believed it could not be large. At any rate, the hon'ble mover of the Bill was probably in a position to enlighten us on that point; but he might observe that wherever tolls were levied on roads great complaints were made by the people. They did not object to pay tolls on ferries; but road tolls were a fertile source of annoyance, harassment, and irritation. He might remind the Council that not many years ago, when the question of a road cess was under discussion, Mr. Leonard, the then Public Works Secretary, who, it might be presumed, represented the views of the Government of the day, wrote a very exhaustive note on the subject, and pointed out the objections which existed to the system of levying tolls on roads. One of the grounds put forward in support of the road cess was, that tolls on roads could then be done away with. So, for the sake of consistency, he submitted that road tolls in municipalities ought to be abolished, even if they were productive financially. On these grounds he proposed the amendment which he had moved.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said that the first toll on roads seemed to have been introduced in 1837-38. Subsequently a law was passed—Act VIII of 1851—which authorized the levy of rates of toll not exceeding the rates mentioned in the schedule, to be levied upon any road or bridge made or repaired at the expense of the Government: so that the object of the Act appeared to be that when roads or bridges were made or repaired at the expense of the Government, then only should there be a levy of a toll. Then an Act was passed in 1864—Act XV of that year—by which the Schedule of Act VIII of 1851 was repealed and another schedule substituted. The original intention of Government seemed to be the levy of the tolls on roads and bridges made or repaired by the Government only. Now, it appeared that the Municipal Act imposed a tax on horses, carriages, and carts in Howrah and the Suburbs and other places for keeping roads in good order, and for the construction of new roads. So that the very object for which the law of 1851 was passed was effected by the subsequent enactment of the municipal laws. Besides, we had a license tax to be paid by owners of carts and bullocks, and also a tax by householders for keeping the roads in municipalities in good order. To levy a further tax on roads, would be to impose a double tax on cart-owners and householders, who already paid a separate tax under the Municipal Acts. He therefore thought that, on principle, a double tax ought not to be levied, and he agreed with the hon'ble member in the amendment which he had proposed.

The HON'BLE MR. DAMPIER would ask the Council to postpone the consideration of the amendment until he had time to learn what the practical effect of giving up tolls on roads would be. He had already said, when introducing this Bill, that this tax was admitted to be harassing and vexatious; still it was unfortunately necessary to do many things which were more or less harassing to obtain money when it was required.

The HON'BLE MR. BELL said he had only one observation to make with reference to what had fallen from the hon'ble mover of the Bill, and that was that if it was impossible to do away with tolls on roads which already existed in municipalities, it might be provided that no such tolls should be levied hereafter. That would have the effect of merely sanctioning existing tolls. He believed that no tolls were now levied on Government roads, and that the principle of having these toll-bars was generally condemned.

HIS HONOR THE PRESIDENT said tolls on roads were now existing, and he thought the Government ought not to give up existing imposts without further inquiry as to what the effect would be; so, if the Council would agree, he should be glad to postpone the consideration of the amendment until the hon'ble mover of the Bill had an opportunity of considering its effect.

The further consideration of the section was then postponed.

Section 78 was agreed to.

Section 79 provided that the duration of assessments and valuations under the Act should be "three years."

The HON'BLE BABOO KRISTODAS PAL moved the substitution of the words "six years" for the words "three years." He said he had been led to make this proposal with a view to make this part of the mofussil municipal law uniform

with the Calcutta municipal law. In the Calcutta Bill the duration of the assessment was fixed at six years; and if it had been thought reasonable to limit the period of assessment to six years in Calcutta, it appeared to him that it would be much more reasonable to fix that limit in the mofussil.

The HON'BLE SIR STUART HOGG hardly thought that the circumstances of Calcutta and the mofussil were analogous. The value of property in Calcutta was well known, and was not likely to alter very much; but the circumstances in mofussil towns were quite different, and he must therefore oppose the amendment.

The HON'BLE MR. DAMPIER said he was also inclined to think that the circumstances of mofussil municipalities would be liable to more variation; some might flourish much, others might fall into decadence. Three years was the period fixed in the existing law, and he did not see any reason for altering it.

The HON'BLE BABOO KRISTODAS PAL said that as often as a new assessment was made the people were liable to great excitement and harassment, and therefore he thought the popular mind would be set at rest by the prolongation of the term for which an assessment would continue in force; the value of property in the mofussil did not rise so rapidly as to necessitate frequent changes in the assessments.

HIS HONOR THE PRESIDENT did not think there was sufficient occasion to alter the existing law. He thought they ought to be careful, in a Bill which was merely to consolidate and amend the law, not to make alterations unless some necessity was shown. It was not as if they were framing a new law, but they were merely consolidating the existing law. He was quite willing to make a change wherever good reason for the change was shown.

The motion was negatived, and the section was agreed to.

The second clause of section 80 provided as follows:—

"Provided that no rate shall be assessed or levied on any building which is used exclusively as a place of worship, as a hospital, or police station, or for any purposes of the Municipality."

On the motion of the HON'BLE BABOO KRISTODAS PAL the words "on any arable land or" were inserted after the word "levied," arable land not being subject to assessment under the existing law.

The HON'BLE BABOO RAMSHUNKER SEN moved the insertion of the words "an educational institution" after the word "hospital." He thought that schools and places of public instruction ought not to be assessed. Places of worship might be very necessary for religious training, and hospitals might be necessary for the cure of bodily diseases; so also places of instruction were very necessary for moral and intellectual training; and he would therefore declare that such institutions should be exempted from assessment.

The HON'BLE MOULVIE MEER MAHOMED ALI observed that many schools were opened with a view to gain, and he did not think that such places should be exempted from taxation; he would, however, exempt schools which were open for purposes of charity.

The HON'BLE MR. DAMPIER did not think the principle of the amendment was good. Of course, if it was desirable from large-heartedness to encourage

education by relieving it from the pressure of taxation, it might be done; but on principle he thought educational buildings should pay their own share of municipal taxation.

After some further conversation the motion was put and negatived.

The HON'BLE MR. DAMPIER moved the omission of the words "or for any purposes of the municipality." He had lately received a communication from the Dacca Municipality, and one from the Collector of the 24-Pergunnahs. They represented that municipalities often hired the buildings they used, and when they did so, there was no reason why the tax payable by the proprietor of those buildings should not be levied.

The motion was agreed to; and on the motion of the HON'BLE BABOO KRISTODAS PAL the words "or police station" were also omitted in this section, and in line 5 of section 88.

The HON'BLE MR. DAMPIER moved the insertion of the following section after section 80:—

"(80*a*) Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four rupees per annum, such person may, within fifteen days of the publication of the notice of the preparation of the assessment list as provided by section 101, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him in respect of the said holdings a rate to be calculated at seven and a half per centum on the annual value of such holdings; and the Commissioners shall thereupon substitute such rate, and, for the purpose of calculating the amount of such rate, shall determine the annual value of the said holdings in the manner provided by section 90.

Every rate imposed under this section shall be payable by the occupier of the holdings so rated."

He said that this section was intended to meet the difficulty which had arisen with reference to the tax on persons, with special reference to the use of the term "holding." The hon'ble and learned Advocate-General had pointed out that where the tax levied was an assessment on the person according to his property and circumstances, it was very important to define what a holding should be, because the maximum of that tax was Rs. 84 a year, or Rs. 7 a month on each holding. The case of a millionaire having a large area of land covered with several buildings had been taken for illustration; and it had been contended that if you left it to the discretion of the Commissioners, and did not define what a separate holding should be, they might split up the property into several holdings, and tax the owner up to the maximum for each of the holdings into which they chose to divide the property. After considering the question, the conclusion arrived at by the Advocate-General, the hon'ble member on his right (Mr. Bell) and the speaker, was that the definition of the word "holding" would not be of much importance if such a clause as the one he had just read were put into the Bill; the effect of which would be this, that in any place in which an assessment on the person was in force, if any person had been assessed at more than Rs. 7 per month, and in respect of more than one holding, the person so assessed might say—"Instead of this assessment I elect to have a rate of 7½ per cent. imposed on the value of

each holding;" whereupon the Commissioners would be obliged to tax the holdings accordingly, the tax of course being paid by the occupier and not by the owner.

His Honor the President said he was in favor of the amendment as far as it went. Whether it obviated all the difficulties that had been raised, he was not sure; but as far as it went, it appeared to him to be good, inasmuch as it imposed a check on the undue multiplication of holdings for the purpose of assessment. He understood the abuse lay in this, that at the time of assessment a particular number of holdings might be arbitrarily made for the purpose of assessment. He quite agreed that it was very desirable to impose a check on such a multiplication of holdings, and in so far as the amendment imposed this check he was in favor of the amendment.

The motion was agreed to.

Section 81 empowered "the Commissioners" to exempt from assessment any person whom they might deem too poor to pay the tax.

The Hon'ble Baboo Kristodas Pal moved the insertion of the words "at a meeting" after the word "Commissioners" in the first line. He thought that exemptions ought not to be made without the sanction of the Commissioners at a meeting.

The Hon'ble Baboo Juggadanund Mookerjee observed that practically the inquiry into claims to exemption on the ground of poverty would take up a good deal of the time of the Commissioners. He would leave the Chairman to determine these cases, and if any person was dissatisfied with the decision of the Chairman he could appeal to the Commissioners, and then the general powers given to the Commissioners at a meeting might be exercised by them by way of appeal.

The Hon'ble Sir Stuart Hogg would not allow every petty order of the Chairman to be made subject to an appeal to the Commissioners. These matters would be very much better decided by the Chairman than by the Commissioners at a meeting.

After some further conversation the motion was put and negatived, and the section was agreed to.

Section 82 was agreed to.

Section 83 empowered the Commissioners to alter assessments under certain circumstances.

The Hon'ble Baboo Kristodas Pal moved the omission of the words "to be inadequate and" in line 8. He said that this section provided that the Commissioners might, at any time after the publication of the assessment list, assess any person who was without authority omitted therefrom, or whose liability to assessment had accrued thereafter; and might enhance any assessment which appeared to them to be inadequate, and to have been so made owing to mistake or fraud. He wished to be informed whether this enhancement might be made during the currency of the assessment, that was to say, within the three years for which the assessment was to remain undisturbed. [The Hon'ble Mr. Dampier said that it was so.] Then this section would override the other sections as to assessment. The ground of inadequacy was

after all a very slender ground, and would be open to misconstruction. He submitted that where there had been mistake or fraud which could be proved, the assessment ought to be revised, but no assessment ought to be enhanced merely because it appeared to be inadequate; for if you allowed the assessments which were made for three years to be disturbed on so slight a ground, it would open a wide loophole for enhancement.

The HON'BLE MR. DAMPIER explained that the essence of the provision was that the assessment was made by mistake or fraud; according to the wording it must be inadequate, *and* have been so made by mistake or fraud.

The HON'BLE BABOO KRISTODAS PAL accepted the explanation which had been made and withdrew his amendment.

The section was then agreed to, and so also were Sections 84 to 96.

Section 97 gave power to revise the valuation and assessment on holdings.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the following words at the end of paragraph 1 :—

"A notice shall be served upon the owner or occupier of every holding which may be so assessed, or the assessment of which might be fixed at a higher sum than what was prevailing for the time being."

He thought that in every case where an assessment was increased or newly made, notice should be served on the owner or occupier. That was not clear from this or any subsequent section, and he therefore proposed the amendment.

The HON'BLE MR. DAMPIER said he thought the hon'ble member would withdraw his amendment if he looked at Sections 102 and 104. Anybody who had an assessment imposed upon him for the first time, or whose assessment was enhanced in any manner whatever, might appeal according to the procedure laid down for the review of assessments. Now, when was this appeal to be made? Section 104 said within one of two periods, whichever should last expire; either within one month from the publication of the assessment list (which would not apply to a single assessment made within the year), or "within fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made;" so that practically there were fifteen days given to apply for a review whenever an assessment was altered.

After some further conversation the motion was by leave withdrawn, and the section was then agreed to.

Sections 98 and 99 were agreed to.

Section 100 provided a penalty for failure to give notice within ten days of the re-occupation of a house, for which a remission or refund of the rate had been made.

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the words "one month" for "ten days" in line six, and of the word "twice" for "three times" in line seven. He considered that ten days was too short a time to allow for giving the notice required, and that the penalty of three times the amount of rate was too severe for the offence. The failure might be caused by oversight or illness, and he thought there could be no harm in allowing one month.

The HON'BLE MR. DAMPIER observed that the penalty in the Calcutta Act was the same, namely, three times the amount of the rate; he must oppose the

amendment, on the ground that the Select Committee had considered and decided the point.

His Honor the President observed that it was quite clear that the person who owned a house must know that it had been re-occupied, and if he failed to give notice of re-occupation, he ought to be made to pay the penalty prescribed. The temptation not to give notice was immense.

The Hon'ble Baboo Kristodas Pal observed that the head of the family might be absent, and the inmates of the family might be incapable of giving the notice required; he thought therefore that some further time be allowed.

The Hon'ble Mr. Bell said he agreed with the hon'ble mover of the Bill that when these matters had been decided by the Select Committee, the Council ought not to reverse the decision without some good grounds. He thought the period of ten days was quite sufficient time to allow for the giving of this notice: if a man had a month's grace, he would take his time about it and probably forget it altogether; but if you limited him to ten days, as soon as his house was re-occupied he would give information. If, as the hon'ble member opposite (Baboo Kristodas Pal) had suggested, the owner or proprietor were absent, still his agent, the person who admitted the new tenant into the house, would be competent to give notice that the house was re-occupied, and was again subject to taxation. Mr. Bell did not see that any sufficient reason had been given to alter the time fixed by the section or to reduce the penalty.

The motion was put and negatived, and the section was agreed to.

Section 101 related to the publication of assessment lists.

The Hon'ble Mr. Dampier said that, in reference to this very important section, he had received a suggestion from the Chairman of the Suburban Municipality. The effect of this section and of Section 348, taken together, came to this, that the assessment list and the valuation and rating lists were to be deposited in the office of the Commissioners—kept posted up at the door of the Commissioners' building—and an extract of so much of them as related to the jurisdiction of any police station was also to be posted up at such police station. Mr. Wilson, the Chairman of the Suburban Commissioners, stated that his rating list occupied 24 folio volumes, and it was absurd to expect these books to be hung up, as *ishtahars* were hung up, at the several police stations. Besides, there would be great expense on account of recopying; and moreover, the assessment boundaries did not coincide with the boundaries of police stations. Therefore it was necessary to give up the idea of hanging up the assessment and rating lists at the police stations and the door of the Commissioners' office; and instead of the assessment and rating lists, it was proposed that a notice in the form given in the first schedule annexed to the Act should be posted up and published by proclamation at the police stations and in the most public manner, informing the people that the lists were ready, and inviting them to go to the office of the Commissioners to inspect them. He thought such a procedure would be quite sufficient, and he therefore moved that in Section 101 the following be substituted:—

"When the assessment list of the tax upon persons mentioned in Section 78, or the valuation and rating list of the rate on the annual value of holdings mentioned in Section 92,

shall have been prepared and signed by the Chairman, the Commissioners shall cause the notice in form A, or the notice in form B of the first schedule (as the case may be), to be published in the manner required by Section 348."

The HON'BLE MR. BELL said he thought it would be absurd to expect these lists to be copied and hung up at the police stations, but it appeared to him that something further ought to be done. When a new assessment was made for the first time, special notice should be given. That was the law now, as laid down by Act III of 1864, the thirtieth section of which provided that in all cases in which any property was for the first time assessed, or the assessment was increased, special notice thereof should be given to the owners or occupiers of such property. He thought that if a provision to that effect were inserted, it would meet all the requirements of the case.

The HON'BLE MR. DAMPIER observed that he had already stated that the special notice referred to was contained in the notice of demand which was to be presented with the Bill; if any change was made in the rate of tax, it would be specially pointed out in the notice of demand that the assessee was at liberty to apply for review of the assessment instead of paying the amount demanded. Hon'ble members would observe that there was a note to that effect in the form of the notice of demand given in the second schedule.

The HON'BLE MR. BELL expressed himself satisfied, and thought that that would meet all his objections.

The motion was then carried.

On the motion of the HON'BLE MR. DAMPIER, amendments which were rendered necessary by the adoption of the previous motion, were made in Sections 79, 92, 96, 97, 104, 348, and Forms A and B of the first schedule.

Section 102 was agreed to.

Section 103 provided that applications for review of assessment should be heard and determined by not less than three Commissioners, who should be appointed by the Chairman.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "other than the Chairman or Vice-Chairman" after the words "three Commissioners" in line 4, and the substitution of the words "Commissioners at a meeting" for the word "Chairman" in line 6. The object of his amendments was to make this provision of the Mofussil Bill correspond with a similar provision in the Calcutta Bill. That Bill provided that the executive officers of the Municipality should not sit on the Bench of Justices to hear appeals. Similarly, he proposed that in the mofussil the Appellate Board should be constituted of Commissioners other than the Chairman or Vice-Chairman, who were executive officers.

The HON'BLE MR. BELL said mofussil municipalities were very differently constituted from that of Calcutta with regard to its members. It was a matter of very great difficulty in a mofussil municipality to get the attendance of members to hear these assessment cases. As Chairman of one of these municipalities, he had been compelled to sit because he could get no other members to do so. He therefore doubted very much whether it was expedient to pass this amendment, especially as in these assessment matters it

was of very great importance to have either the Chairman or Vice-Chairman on the Bench, as it was of the greatest consequence that these assessment appeals should be properly decided. The great majority of gentlemen who sat on Municipal Boards in the mofussil were not very well conversant with judicial duties, and the revision of assessments was in fact a sort of judicial inquiry. He thought it would be very unfortunate if the Chairman and Vice-Chairman were to be excluded from these Appellate Benches.

The HON'BLE MR. DAMPIER observed that he would adhere to the recommendation of the Committee on both these points; and after what had fallen from the hon'ble member who had just spoken, his opinion was stronger than it was before. The first amendment would be absolutely unworkable.

The motion was put and negatived, and the section was then agreed to.

Sections 104 to 109 were agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "and a fee of two annas as costs of service" after the words "due" in line 6 of Section 110. It appeared to him that as this section was worded, the cost of the service of a bill was to be levied whether the bill was paid instantly or not. Now, municipal taxes were levied not only for general municipal purposes, but also for the collection of the taxes themselves, and he did not understand why a separate fee should be levied for the collection of the tax. This fee, he believed, was not leviable under the existing law, and it was one of those innovations which were open to serious objection.

The HON'BLE MR. DAMPIER explained that the words did appear to be out of place. Under the old law a charge was made when a notice of demand was served; but in the Bill as it stood it was provided that the notice of demand should be served simultaneously with the bill; and if the person paid the bill in fifteen days, no process would be necessary, and no fee would have to be paid.

The motion was carried, and the section as amended was agreed to.

Section 111 was agreed to.

Section 112 provided the mode of executing distress warrants.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the words "under an order signed by the Chairman or Vice-Chairman" after the word "except" in line 15. He thought it was very necessary that some check should be placed on the executive officers of the municipality in carrying out duties of this description. They were too apt to oppress the people, and by way of check, he proposed that they should not be authorized to break open doors unless they held an order signed by the Chairman or Vice-Chairman. In the mofussil the people were not always able to protect themselves, and great abuses and oppressions were practised upon them by persons who were dressed in brief authority.

The HON'BLE MR. BELL explained that the order signed by the Chairman authorized the warrant officer to enter a house; but he was not to enter or break open any room appropriated for the zenana, or residence of women, except after three hours' notice, and opportunity given for the retirement of the women. He thought that if the officer had the authority of the Chairman to enter a house,

surely that was quite sufficient, and he did not see that any further security was required.

The amendment was by leave withdrawn, and the section was agreed to.

The HON'BLE BABOO RAMSHUNKER SEN moved the insertion of the following section after Section 113 :—

"(113*a*) All officers and servants of the Commissioners, and all chowkidars, constables, and other officers of the police, are prohibited from purchasing any such property at any such sale as aforesaid."

It was a mere reproduction of the existing law; and as it was a very wholesome provision against abuse by municipal and police servants, he hoped the Council would take care to secure the protection provided by this section.

The motion was agreed to.

Section 124 provided a penalty of three times the amount for keeping a carriage or horse without a license.

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the word "twice" for "three times" in line 5. He thought a penalty of three times the amount of license fee was very heavy, and that twice the amount would be sufficient.

HIS HONOR THE PRESIDENT observed that he supposed this amendment was open to the same objection that had been taken to a previous one of a similar nature, namely that the Select Committee had decided the matter, and that the penalty was the same in the Calcutta Bill.

The motion was put and negatived, and the section was then agreed to.

Section 125 was agreed to.

Section 126 empowered the Commissioners to compound with livery stable-keepers and others.

The HON'BLE MR. DAMPIER moved the insertion of the words "or with any other person" after the word "hire" in line 6. The object of the amendment was to enable the Commissioners to compound with private individuals. The Dacca Municipal Commissioners had strongly recommended the amendment; they considered that persons would rather pay a little more to save the trouble and annoyance of constantly applying for licenses.

The HON'BLE SIR STUART HOGG thought the amendment altogether unnecessary. In his experience people generally compounded for a less payment than what they would otherwise have to make, and not for more.

The motion was by leave withdrawn, and the section was agreed to.

Section 127 prescribed a penalty of three times the amount upon persons who, having compounded, refused to pay the sum on demand.

The HON'BLE MR. BELL moved the omission of this section. He saw no reason why default in paying the tax under this section should be treated in a different way to a default in the payment of any other tax.

The motion was agreed to.

Sections 128 to 130 were agreed to.

Section 131 related to the registration and numbering of carts, and specified certain exemptions.

On the motion of the HON'BLE MR. DAMPIER the following additional exemption was inserted :—

"(c) Which are kept in Howrah or within the suburbs of Calcutta."

Sections 132 to 141 were agreed to.

In Section 142 the penalty for refusing to leave a ferry boat was, on the motion of the HON'BLE NAWAB SYED ASGHAR ALI, reduced from "rupees twenty-five" to "rupees ten."

Section 143 prescribed a penalty for keeping an unauthorized ferry.

The HON'BLE BABOO KRISTODAS PAL moved the addition of the following proviso :—

"Provided this section shall not apply to any private ferry which may be in existence at the time this Act comes into force."

This section, he said, gave a discretion to the Commissioners as to ferries already in existence, and under another section power was given to the Commissioners to take over a ferry by paying compensation, and if a new ferry was established, a license was to be granted. He did not think it would be fair or equitable that the Commissioners should have power to interfere with existing ferries which they might not require for their own purposes. Vested rights, he submitted, ought not to be unnecessarily interfered with.

The motion was carried, and the section as amended was then agreed to.

Section 144 prescribed a penalty of fifty rupees for keeping an unauthorized ferry, and a further fine of ten rupees a day during the continuance of the offence.

The HON'BLE NAWAB SYED ASGHAR ALI moved the substitution of the words "twenty-five" for "fifty" in line 4, and of "five" for "ten" in line 5.

The HON'BLE MR. DAMPIER observed that he could not consent to the amendment, as the penalty here prescribed was for a deliberate offence, committed for the sake of pecuniary gain.

The motion was by leave withdrawn, and the section was agreed to.

The consideration of Sections 145 to 150 was postponed.

Section 151 was as follows :—

"The Commissioners may grant a lease of any municipal ferry or toll-bar for any period not exceeding three years."

The HON'BLE MR. BELL moved the insertion of the following words at the end of the section :—

"and may at any time cancel such lease. Whenever such lease is cancelled otherwise than under Section 141, the Commissioners shall make adequate compensation to the lessee of the ferry. In case the lessee of the ferry refuses to accept the compensation offered by the Commissioners, the amount to be paid as compensation shall be determined by the Commissioner of the division."

He did not know whether there was any great necessity for this amendment, because it might be provided for under the terms of the lease; but his object in granting the Commissioners power to cancel a lease within three years was this. It happened often that circumstances occurred which made the Commissioners desirous of raising or reducing the tolls throughout the municipality, but if a lease existed no alteration in the rates could be made. Or the

Commissioners might wish to introduce improved boats; but no lessee would put an improved ferry-boat during the continuance of his lease. In the interest, therefore, of the public, he thought it desirable to give the Commissioners power to cancel leases on making suitable compensation.

The HON'BLE BABOO KRISTODAS PAL was sorry he could not concur in the amendment. The Commissioners might exercise their discretion in the granting of leases. The section did not bind them to grant a lease for three years, but when a lease was executed, it would not be fair or just that it should be left to the discretion of the Commissioners to cancel the lease: when once an agreement was made, it ought certainly to hold good for the term for which it was granted.

The HON'BLE MR. DAMPIER did not see the force of the hon'ble member's objection. If, with this clause staring him in the face, a contractor came in and took a lease, knowing at the time that the Commissioners might, if they wished, at any time cancel it on public grounds, and that he was to receive compensation for such cancellation, MR. DAMPIER could not see any hardship in the matter, as the contractor would not be taken by surprise, and would receive in one shape what he failed to receive in another.

The motion was put and negatived, and the section was agreed to; so also was Section 152.

Section 153 prescribed a penalty of fifty rupees for neglecting to hang up a table of tolls, and a further fine of ten rupees per day during the continuance of the offence.

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the word "twenty-five" for "fifty" in line 5, and of "five" for "ten" in line 6. He did not think that so heavy a penalty should be imposed for a simple omission to hang up a table of tolls.

The HON'BLE MR. DAMPIER observed that the failure to hang up the table of tolls might proceed from the wish of the toll collector to keep passengers in ignorance of the tolls he was authorized to charge, and that would be a very serious offence. He did not think any Magistrate would impose the maximum penalty if the failure were caused by circumstances which were beyond control.

The motion was by leave withdrawn, and the section was agreed to.

Sections 154 to 158 were agreed to.

The HON'BLE BABOO RAMSHUNKER SEN moved the insertion of the following after Section 158:—

"The Lieutenant-Governor may in his discretion, by a notification published in the *Calcutta Gazette*, suspend the levy of tolls on roads and navigable channels, as provided for in this Act, within the limits of any municipality during seasons of general scarcity and distress."

After some conversation the further consideration of the section was postponed.

Sections 159 to 165 were agreed to.

Section 166 provided as follows:—

"The Lieutenant-Governor shall consider the police estimate so transmitted to him, and may approve, reject, or modify, and approve as modified the same or any part thereof.

The Lieutenant-Governor shall also determine whether the whole or some, and what part of the expense of the police provided for in such estimate, shall be borne by the Municipality to which the same refers.

Provided that the expense so to be borne by any municipality in which the tax on persons is in force shall not exceed, for a first-class municipality, the average rate of one rupee and eight annas in the year, and for a second-class municipality, the average rate of one rupee and four annas in the year for each holding in respect of the occupation of which the tax is imposed.

Provided also that the expense so to be borne by any municipality in which the tax on the value of holdings is in force shall not exceed five per centum on the total annual value of such holdings."

The HON'BLE BABOO KRISTODAS PAL moved the substitution of the following for the last two paragraphs of the section:—

"Provided that the expense so to be borne by any municipality shall not exceed one-fourth the annual income of such municipality."

He believed that the Council was well aware that the police charges absorbed the greater portion of the income of mofussil municipalities; particularly of second-class municipalities. He held in his hand a statement which showed that in 1873-74 there were 25 first-class municipalities in Bengal, yielding a total annual income of Rs. 10,84,620. He found that the municipalities of the Suburbs of Calcutta and Howrah yielded Rs. 4,66,249, and the remaining twenty-three first-class municipalities Rs. 6,18,371. Then it appeared that the police charges of these twenty-three municipalities came to Rs. 1,73,718, and the average income left for other purposes of these municipalities was Rs. 19,332 per annum, or Rs. 1,611 per month. Thus, as regards first-class municipalities, the contribution on account of police charges came to nearly one-fourth of the aggregate income.

Then, with regard to second-class municipalities, he found that in 1873-74 there were 92; and the average income left to them after payment of police was Rs. 3,071 per annum, or about Rs. 250 per month. The total annual income of these second-class municipalities was Rs. 4,90,554; the police charges amounted to Rs. 2,07,920, and the balance, after paying for police, was Rs. 2,82,534. Divide this balance between 92 municipalities, and you would find that the average income was, as he had stated, Rs. 3,071 per annum, or Rs. 250 monthly. Now, with those stubborn facts before the Council, he asked whether mofussil municipalities were in a position to carry out the works and purposes which were being prescribed to them, and whether it was not incumbent on the Government to consider as to how far the police charges could be reduced or supplemented from other funds, and how a sufficient balance could be left of the municipal fund to meet the ordinary requirements of these towns. He need hardly remind the Council that the general revenues ought to be appropriated, to a certain extent, towards the support of the police in mofussil towns. The object of the abkaree revenue was primarily the maintenance of the police. One of the objects of the stamp revenue was also the same. And as in the capital towns the Government contributed one-fourth of the police charges, he did not think it was fair that the cost of the municipal police in the mofussil should be met entirely out of the municipal taxes. If these municipalities were rich, or sufficiently well-to-do,

and could afford to contribute towards the entire maintenance of the police without neglecting the legitimate requirements of the tax-payers, he would not object. But it appeared from the figures which he had read, and which were compiled from official records, that after paying police charges, second-class municipalities had not much left to provide for the ordinary requirements of the towns. In fact, out of Rs. 250, which was the balance left, a considerable sum went towards the maintenance of municipal establishments; and the vexatious machinery of municipal taxation seemed to be intended to raise money chiefly for the police and the establishments. When such was the case, it was worthy the consideration of the Council whether a limit should not be put to the liability of second-class towns for the maintenance of the police.

The HON'BLE MR. DAMPIER said this Bill was introduced on the principle of not increasing municipal taxation, and he thought it must also be considered that it was not introduced with the intention of making any radical difference in the application of the municipal funds. At any rate, the amendment which was now proposed was a very large one, and was certainly not one upon which he could venture to speak except under instructions from the Government. Under the existing law, the amount to be applied for police purposes was not to exceed a certain maximum of taxation. An amendment was now proposed to alter it, which would have the effect of throwing on the Government a very increased expenditure on account of police. The question was a new one, and he could not accept the amendment without consultation with the head of the Government.

The HON'BLE MR. BELL said there appeared to him to be some slight misapprehension with regard to the existing law. Present municipalities fell under two classes; those which were constituted under Act III of 1864, the District Municipal Improvement Act, and those which came under Act VI of 1868, the District Towns' Act. The far greater number of municipalities to which the hon'ble member referred came under Act VI of 1868. Now, that Act was introduced into those towns in which Act XX of 1856 was previously in force. Act XX of 1856 was generally called the Chowkeedaree Act. It was introduced into those towns, not for municipal purposes, but to provide funds for the employment of police: that was the first and primary object of Act XX of 1856. It was true that the residue of the funds raised under that Act, after providing for the police, was devoted to conservancy purposes; but that was quite a secondary object of the Act. But the hon'ble member, by his amendment, proposed to reverse the whole preceding legislation on the subject. The primary object of Act XX of 1856 was for police; and if any funds were raised over and above the cost of the police, it might, after the police requirements were satisfied, be devoted to municipal purposes. Such being the case, he thought the hon'ble member had not shown any good grounds for the amendment which he proposed.

The HON'BLE BABOO KRISTODAS PAL said the statement from which he had given the figures helped him to an answer to the observations which the hon'ble member had just made. He found that the places now under Act XX of 1856 numbered 69, and those under Act VI of 1868 numbered 92. It

might be that some of the towns under the operation of Act VI of 1868 were formerly under the operation of Act XX of 1856; but they might have developed since, and have therefore been advanced in the scale of municipal organization. But there existed that distinction which the hon'ble member had pointed out. Where Act XX of 1856 prevailed, there the taxes raised were applied to the maintenance of the police. As regards Act VI of 1868, the number of towns under it, as already mentioned, was 92; and the object of the introduction of that Act into those towns was not simply to provide for the maintenance of the police, but to enable the inhabitants to enjoy those advantages which it was the object of municipal arrangements to confer upon them. With an average income of only Rs. 250 per month, after paying for police, it was idle to expect that second class municipalities could be able to do much.

He entirely concurred with the hon'ble mover of the Bill that this was a very important question, and that action could not be taken by the Council without the concurrence of the Government; and as the hon'ble member proposed to postpone the consideration of the question, BABOO KRISTODAS PAL readily accepted the suggestion.

HIS HONOR THE PRESIDENT said he must explain to the Council that there would be the greatest difficulty in the Government accepting an amendment of this kind, for this reason, amongst others, that if the police in these towns was to be maintained at all, it must be from municipal funds; for there were absolutely no other funds. It was all very well to speak of a charge being thrown on the general revenues; but as regards the police the general revenues were hardly applicable. There were certain allotments made from the general treasury to the local Governments, and the question arose whether they could bear the cost for the town police. He might state that they had the greatest difficulty in providing funds for the regular police force for the rest of the country, and therefore it was financially impossible that the Government could undertake further burdens on account of the municipal police. Having lately had occasion to carefully scrutinize the police budget in conjunction with others—one or two of whom there present could bear him out—although he quite admitted the desirability of leaving a margin for conservancy purposes, nevertheless from what he saw he must say frankly that the police charges in mofussil towns must be paid as they were now; and if the margin for conservancy improvements was small, we must be content with small improvements. He could not hold out any hope of the Government being able to accede to the amendment of the hon'ble member, much as HIS HONOR might desire to do so if possible. The hon'ble member spoke of stubborn facts; but HIS HONOR ventured to say that there were no facts so stubborn as financial facts. And as to a reduction of the cost of these police, it was a question of the security of life and property, of which the executive authorities were the best judges.

The HON'BLE MR. DAMPIER said, with reference to what had fallen from the hon'ble member on the right (Mr. Bell), that it was admitted that the first municipalities, the first aggregation of men whose urban character was

recognized, were brought under taxation expressly to meet the cost of police, whatever was over being made use of for conservancy. The maximum then imposed as leviable under the Chowkeedaree Act, of which the object was to provide for police, was an average assessment of Rs. 1-8 per house. That was the maximum to be devoted for police purposes in the very lowest form of municipal vitality. Subsequently, it was found desirable, in one of the later laws, to sanction more formally the raising of funds for conservancy purposes, and thereafter the Magistrate was allowed to raise funds for police and conservancy, provided he did not exceed the original average of Rs. 1-8 per house in any place. Now we came to the maximum in the present Bill, where the system of assessment on persons was in force. The proviso in the section under discussion was as follows:—

"Provided that the expense so to be borne by any municipality in which the tax on persons is in force shall not exceed, for a first-class municipality, the average rate of one rupee and eight annas in the year, and for a second-class municipality the average rate of one rupee and four annas in the year for each holding in respect of the occupation of which the tax is imposed."

It would be seen, therefore, that in the case of second-class municipalities the Bill did actually reduce the maximum which had so long existed by four annas a head.

The motion was then put and negatived, and the section was agreed to.

Sections 167 to 173 were agreed to.

The Hon'ble Baboo Kristodas Pal moved the insertion of the following words after paragraph 2 of Section 174:—

"Any person required to execute a work as aforesaid may show cause to the Commissioners at a meeting why he should not be called upon to execute the said work, and the Commissioners at a meeting shall, after due inquiry, pass such orders upon his application as they may think fit."

And also of the following words at the end of paragraph 3:—

"Provided that such owners or occupiers may submit objections to the items or rates charged as aforesaid to the Commissioners at a meeting."

He said the works which were enjoined under this section were very comprehensive, and he thought that, in common justice to the persons concerned, an opportunity should be given to them to state their objections if they had any. Sometimes the Commissioners—or rather the Chairman, as the term "Commissioners" meant here—might require a person to execute a work which was beyond his means, or which might cause great loss to him; and if the orders of the Chairman in this matter were made final, then there would be no means of redress in cases in which the order might not be quite consistent with justice. It would therefore be fair that the Commissioners at a meeting should allow a hearing to a person who was called upon to execute any work under this section.

The Hon'ble Sir Stuart Hogg observed that if the Chairman was required to carry out sanitary reforms, the objection should be made to him and not to the Commissioners at a meeting. The Chairman, he thought, would be the best judge of such matters. With all due deference to his colleagues,

the Magistrate of the district would probably be right and the Native Commissioners wrong in a matter like this.

The HON'BLE MR. BELL observed that the Magistrate of the district was not always the Chairman of a Municipality; the Chairman very often happened to be the Deputy Magistrate in charge of the sub-division. He thought it a very reasonable proposition that a man, before he was called upon to execute an extensive work, should have an opportunity given to him of stating his objections to the order passed upon him. And he thought that these objections should be made before the Commissioners at a meeting. The Commissioners were generally few in number, and if the work to be executed was of an essential nature, the Chairman would be sure to carry the Commissioners along with him; but if it was not necessary, it was desirable that the opinion of the Commissioners should prevail. The first object ought to be to secure the contentment and prosperity of the people.

The HON'BLE SIR STUART HOGG observed that if this amendment were carried, every single order of the Chairman would be appealed. The hon'ble member who had just spoken, had before expressed the opinion that it would be difficult, if not impossible, to get the Commissioners to meet together to hear appeals; and that as the hearing of appeals required somewhat of a judicial training, the Chairman or Vice-Chairman was more fitted to hear them than the other Commissioners. The probabilities were that in most municipalities there were two or three Native Commissioners, and if this amendment were carried, there was hardly an order of a sanitary nature which would be carried out.

The HON'BLE MR. BELL explained that his former observations referred to the sittings of Commissioners for the hearing of appeals from assessments, a work which required a considerable degree of care, attention, and labor at such meetings, and it was very difficult to get members to attend. But at the general meetings there was no difficulty in getting members to attend. His experience was different from that of the hon'ble member. He admitted that it would be impossible, in a large body like the Calcutta Justices, to refer all these questions to their decision. It was generally the case in mofussil municipalities that all questions of conservancy improvement were first debated by the Commissioners at a meeting, and he was quite sure that if this amendment was accepted, these questions would be fairly and justly determined.

The HON'BLE BABOO KRISTODAS PAL said, if the object of the law was to induce the rate-payers of towns in the mofussil to interest themselves in municipal affairs, he thought the best way to accomplish the object would be to give them a voice in the determination of matters of this kind, as proposed by the hon'ble member who had last spoken. It was well known that in the mofussil the will of the Magistrate was supreme in a manner which was not quite known in the capital; and therefore, if the Magistrate decided that a certain work was to be done, BABOO KRISTODAS PAL did not believe that his native colleagues would dare go against him. But if in a friendly way discussion was held and opinions were ventilated, he thought it would do a great practical good.

The HON'BLE MR. DAMPIER observed that the principle of the Bill was that the more important works and business was to be done by the Commissioners at a meeting, and all other matters by "the Commissioners," that was to say, the Chairman exercising authority on their behalf. He was not quite sure whether the distinction had been sufficiently observed throughout the conservancy clauses of the Bill; but perhaps the object of the amendment might be met by taking care that the orders regarding really important and extensive works were reserved for the determination of the Commissioners at a meeting. In this way the appeal from the order of the Chairman to the Commissioners at a meeting would be avoided.

After some further conversation, the further consideration of the section was postponed.

Sections 175 to 180 were agreed to.

Section 181 was agreed to with a verbal amendment.

Section 182 was agreed to.

Section 183 was agreed to with a verbal amendment.

Section 184 prescribed the hours and mode of removal of offensive matter and rubbish

The HON'BLE BABOO KRISTODAS PAL moved the omission of the following words from the end of the section—

"And may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act."

He thought the cost of removal of rubbish should not be thrown on the occupier who paid the tax. In Calcutta the conservancy carts employed by the Justices removed the refuse deposited from the houses.

After some conversation, the further consideration of the section was postponed.

Sections 185 to 187 were agreed to.

Section 188 empowered the Commissioners to require the removal of noxious vegetation and the improvement of bad drainage within eight days.

The HON'BLE MOULVIE MEER MAHOMED ALI moved the substitution of "fifteen days," for "eight days." He thought the time should be fixed according to the proportion of work to be done, and that the Commissioners ought to have power to extend the period of time on cause shown; and as there was a heavy penalty attached to the failure to carry out the order of the Commissioners, he hoped the amendment would be agreed to.

The motion was carried, and the section as amended was agreed to.

The HON'BLE MOULVIE MEER MAHOMED ALI then moved that in Section 189 the fine for failure to comply with the order of the Commissioners under the preceding section be reduced from Rs. 100 to Rs. 50, and from a daily fine of Rs. 20 for a continuing offence to Rs. 5.

After some conversation the motion was negatived, and the section was passed as it stood.

Section 190 provided that all "rubbish" and offensive matter collected from roads, "houses," &c., should be the property of the Commissioners.

On the motion of the HON'BLE BABOO JUGGADANUND MOOKERJEE the word "houses" was omitted, as it was not intended that broken bricks and mortar (included in the definition of "rubbish") which were collected in houses should be appropriated by the Commissioners.

Sections 191 to 194 were agreed to.

Section 195 empowered the Commissioners to require unwholesome tanks on private premises to be cleansed or drained within "eight days."

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the words "one month" for "eight days." He could say from his own experience that eight days was too short a period to allow for the purpose, and he doubted whether even one month would be sufficient in all cases.

After some conversation the motion was put and negatived, and the section was passed as it stood.

Section 196 was agreed to.

Section 197 gave power to drain off and cleanse stagnant pools, &c., which were likely to prove injurious to the health of the inhabitants.

The HON'BLE NAWAB SYED ASHGAR ALI moved the insertion of the words "being the property of the Commissioners" after the word "excavation" in line 5. He thought that the Commissioners ought not to take any action in respect to private property without giving due notice.

The HON'BLE MR. DAMPIER moved by way of amendment the omission of the whole section, which might be dispensed with.

The amendment was put and agreed to.

Sections 198 and 199 were agreed to.

Section 200 empowered the Commissioners to order the removal within eight days of any future obstruction or encroachment in any road, &c.

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the words "one month" for "eight days."

The motion was put and negatived, and the section was passed as it stood.

Sections 201 to 209 were agreed to.

Section 210 prescribed a penalty of Rs. 100 for failure to comply with an order to secure or protect wells, tanks, &c., and a daily fine of Rs. 20 during the continuance of the offence.

The HON'BLE NAWAB SYED ASHGAR ALI moved the substitution of the words "Rs. 20" for "Rs. 100," and of "Rs. 10" for "Rs. 20."

The motion was put and negatived, and the section passed as it stood.

Sections 211 and 212 were agreed to.

Section 213 provided as follows:—

"If the Commissioners shall have caused any repairs to be made to any house or other structure under the provisions of Section 211, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them."

The HON'BLE BABOO KRISTODAS PAL moved the omission of this section, which he said would practically authorize the Commissioners to confiscate the property of individuals if they did not pay for the cost of repairs. Other parts of the Bill provided for the recovery from private individuals of expenses

incurred by the Commissioners on behalf of such persons, and he did not see why an exceptional course should be taken for the recovery of the cost of repairs done by the Commissioners. If other expenses could be recovered by following the procedure laid down in the Bill, he thought the cost of repairs under this section might likewise be recovered under the same process. This section as it stood gave absolute power to the Commissioners to take possession of a house if they found it unoccupied, unless the money expended by them in its repairs were immediately paid. That was a new provision. It had no place in the existing laws; and he opposed it not only on that ground, but as being opposed to the generally received notions as to rights of property.

The HON'BLE MR. BELL said it appeared to him that this section must have got into the Bill by mistake. He did not think there was any clause authorizing the Commissioners to repair dilapidated houses. Section 211 required owners or occupiers to effect such repairs, and authorized the Commissioners, until such repairs were effected, to put up a proper board or fence for the protection of passengers; and therefore it seemed to him that Section 213 was unnecessary and ought to be omitted. The proper way to enforce the provisions of Section 211 would be to fine the owner or occupier, who was required to place the house in a state of repair so that the passers-by should not be endangered.

The HON'BLE MR. DAMPIER said there was a general section which provided that whenever the Commissioners were authorized to require any person to do anything within a certain time, if the person did not do it, the Commissioners might do it themselves. Under that section the Commissioners would be authorized either to repair or to demolish a dilapidated house, if the proprietors failed to repair or pull it down on requisition under Section 211. Had the hon'ble mover of the amendment thought out its probable effect? If you did not give the Commissioners large powers for the recovery of the expenses of repairs, they would not repair, but pull the houses down.

HIS HONOR THE PRESIDENT said there were many houses in mofussil towns which were simply tumbling down on account of disputes amongst the owners. In fact, there was hardly a town in which one or more such houses were not to be met. As the Bill stood, the Commissioners must pull such houses down because they were dangerous to the passers-by, whereas, according to the intention of the hon'ble mover, these houses might be repaired and taken possession of by the Commissioners. In neither case did the shareholders get them. But was it better that the houses should be repaired and taken possession of by the Commissioners until the repayment of the expenses incurred, or that the houses should be pulled down?

The HON'BLE BABOO KRISTODAS PAL admitted that it was desirable that such houses should be repaired, but he objected to the mode of recovery of the expenses.

The further consideration of the section was then postponed.

Section 214 related to the sale of the materials of houses which had been pulled down, and provided that the proceeds, if unclaimed for the space of one year, should be carried to the credit of the Municipal Fund.

On the motion of the HON'BLE BABOO KRISTODAS PAL the period of "one year" was extended to "three years."

Section 215 was agreed to.

On the motion of the HON'BLE BABOO KRISTODAS PAL the following section was introduced after Section 215:—

"(215*a*) The Commissioners at a meeting may offer rewards for the destruction of wild animals within the limits of a Municipality."

Section 216 was agreed to.

The further consideration of the Bill was then postponed.

The Council was adjourned to Saturday, the 11th instant.

Saturday, the 11th March 1876.

Present:

The Hon'ble G. C. PAUL, *Acting Advocate-General, presiding,*
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYED ASHGUR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

CALCUTTA MUNICIPALITY.

The HON'BLE SIR STUART HOGG moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said that the amendments to which he proposed to call the attention of the Council to-day were all more or less of a formal character, and had been suggested during the discussion on this Bill at the last meeting of the Council. The hon'ble member opposite (Mr. Bell) had pointed out that there was no distinct provision in the Bill to enable Joint Stock Companies to vote, and in order to meet this omission he had now the honor to move that, at the end of the first paragraph of Section 7, the following words be inserted:—

"Provided that any Company registered under 'The Indian Companies' Act, 1866,' which has paid such rates or taxes in the manner aforesaid, shall be entitled to one vote in the ward in which the place of business of the said Company is situated, and such vote shall be given by the Secretary of the Company, or some other person duly authorised in that behalf."

That would provide for every registered Company in Calcutta having a vote.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said that Section 10, as drafted according to the suggestion of his hon'ble friend (Mr. Bell), was not in the hands of the Council, but it had been published in the Gazette of the 23rd February, and it provided that a person holding property in different wards of the town might elect in which ward he should vote. According to that section no person should be entitled to vote in more than one ward; but any person qualified to vote might vote in the ward in which he resided, or in which his place of business was situated, or in which any property on account of which he had paid rates was situated. Some doubt had been expressed as to the meaning of the section, and therefore, in order to make it a little more definite, it was proposed to add the following words after paragraph 2 of that section:—

"Every person qualified to vote as hereinbefore provided may vote for as many candidates as there are Commissioners to be elected in the ward which is allotted to such person under Section 13, but no person so qualified shall be entitled to give more than one vote to any one candidate."

That was to say, every person entitled to vote might vote for as many Commissioners as were allotted to the ward in which he voted, but he would not be allowed to give more than one vote for each candidate.

The HON'BLE MR. BELL strongly objected to the latter part of this amendment, namely "that no person so qualified shall be entitled to give more than one vote to any one candidate." He thought that in a town like Calcutta, where there were so many different nationalities, it was very desirable that minorities should have a chance of being represented in the Municipal Corporation. According to the last census returns, the vast majority of the population of Calcutta consisted of Hindus, but there was a large European and a large Mahomedan population; and he thought it was very desirable that these classes of the community should have a chance of sending their representatives to the municipal body, and therefore, instead of the words to which he had taken exception, he would propose as an amendment the insertion of the following words:—"Or he may give all his votes in favor of one candidate." He might also say that, if the system of cumulative voting had been found useful and desirable in England, it would be much more useful and much more desirable in a place like Calcutta; in fact, if we did not allow cumulative voting, he very much doubted whether the European and Mahomedan communities would be able to return a single representative of their own. Therefore he thought that, instead of limiting a man to one vote for each candidate, he should be allowed to give all his votes to any candidate he pleased.

The HON'BLE SIR STUART HOGG said that he had no possible objection to offer to the amendment, as it would assist minorities to send representatives of their own to the Corporation.

The HON'BLE BABOO KRISTODAS PAL said that he did not quite understand the nature of the amendment.

The HON'BLE MR. BELL said that, supposing three Commissioners were to be elected from a ward, under the terms of the hon'ble mover's proposition, a

rate-payer or tax-payer who had three votes to give could only give one vote to each man whom it was proposed to elect, but by the amendment suggested the voter could give all his three votes to one man.

The HON'BLE BABOO KRISTODAS PAL said he quite understood that part of the amendment, but wished to know whether it was proposed to extend the privilege of voting for more candidates than one to persons according to the amount of rates they paid.

The HON'BLE MR. BELL replied that he did not understand that that question was at present before the Council. They were now considering the amendment he had proposed, which was quite independent of the amount of rates which a man paid. He did not quite agree with the clause which the hon'ble mover of the Bill proposed, and he would be quite prepared to support a substantive amendment to the effect proposed by the hon'ble member opposite (Baboo Kristodas Pal). For his own part, however, he might say that he thought a man should have votes according to the rates he paid.

The amendment proposed by the Hon'ble Mr. Bell having been accepted by Sir Stuart Hogg, and the sense of the Council being in favor of the proposition, the PRESIDENT observed that, as the principle was admitted, the matter had better stand over, so as to give sufficient time for the drafting of the section.

The HON'BLE BABOO KRISTODAS PAL moved that, at the end of Section 10, the following words be inserted:—

"Every person shall be entitled to vote in every ward in which any land or masonry buildings, on account of which he has paid rates to the amount and in the manner mentioned in Section 7, is situated."

At a previous sitting of the Council the question covered by his amendment had been discussed and thrown out; but since then it had been suggested to him by the hon'ble member opposite (Mr. Bell) that the principle, for which he had contended, was recognized in some of the local government Acts in England; in fact, under the joint operation of the public health and local government Acts in England, a person having property in more wards than one was entitled to vote in every one of them within a certain limit. He was therefore encouraged to put forward this amendment again. The principle, he submitted, was one which could not be disputed on broad grounds of justice. According to the rule laid down in the Bill as it stood at present, a person who paid Rs. 25 per year in rates and taxes was entitled to one vote only, that was to say, in only one ward; but if he held property which qualified him to be a voter in more wards than one, he would have to select some one of the several wards in which he would like to exercise his vote. Now, there were many persons in Calcutta who owned property in more wards than one, and it would not be just to deprive them of the privilege of voting in as many wards as they possessed property in. He was aware that the principle, that each rate-payer should vote in only one ward, had been recognized in the general Municipal Acts in England; but considering the circumstances of Calcutta, and bearing in mind that the experiment of elective self-government in this city was new, and that the principle of cumulative voting had been recognized and acted

upon in certain cases in England, he thought that those who had the largest stake in the town ought to be sufficiently represented in it. Holding these views, he ventured to propose this amendment. He might add that he was prepared to place a limit on the number of votes for wards, and if the Council desired it, he would add to the words which he had already moved the following:—

"Provided that no person shall be entitled to vote in more than five wards."

He should also state that all that he wished to do was to ask the Council to consider the principle embodied in his amendment; they might afterwards settle the wording. It had been brought to his notice that some modification was necessary in the wording, the words "or taxes" being, through an oversight, omitted after the word "rates."

The HON'BLE SIR STUART HOGG said that the question now raised had been discussed at a previous meeting of the Council and rejected, but the hon'ble member had thought proper to bring it forward again. It was a subject on which considerable difference of opinion existed. It would enable large proprietors, who held property in a great many wards, as many wealthy natives in the city did, to vote in as many wards as they possessed property, and would thus throw much power in the hands of persons holding house property in different quarters of the town. He therefore felt it his duty to vote against the amendment. At any rate, if it were accepted, the wording of the clause would require to be altered, as only "rates" and not "taxes" were, he believed, intended by the mover to be taken into account.

The HON'BLE MR. BELL did not agree with the hon'ble mover of the Bill, that this question had already been settled in Council, and did not therefore see why they should not now consider it. He was under the impression that the majority of the Council were in favor of giving a greater share of representation to men having property in different wards. He could see no conceivable objection why a person might not have a vote in each ward in which he had qualifying property, and he could not think that it would give undue influence to any one member of the community who possessed a considerable number of houses in various parts of the town.

The HON'BLE SIR STUART HOGG remarked that if the principle of the amendment were carried out and acted upon, a man who had thirty houses in the town would have sixty votes.

The HON'BLE MR. BELL thought that if a man had so much property, he should have so many votes given him. At the same time, there was a proviso put forward by the hon'ble mover which the Council might accept.

The HON'BLE SIR STUART HOGG said that what he objected to was the principle of the amendment. If the amendment were accepted, it was a matter of small importance whether the proviso were inserted or not.

The HON'BLE MR. DAMPIER asked whether or not the question had already been definitely settled by this Council.

The HON'BLE THE PRESIDENT said that he did not think it had: he believed it had only been provisionally discussed.

The HON'BLE BABOO KRISTODAS PAL said that the hon'ble mover of the Bill had moved a resolution on which he had suggested an amendment, but he believed nothing was definitely settled.

The HON'BLE MR. BELL said that, as far as he recollected, the matter stood in this way. The hon'ble mover of the Bill had moved that when a man had property in more wards than one, the Chairman should say in which ward he was entitled to vote. The hon'ble member opposite (Baboo Kristodas Pal) had suggested that he should be allowed to vote in all the wards, but he (MR. BELL) had put forward a second suggestion, that a man should be allowed to select in which ward he would use his vote. His suggestion had had the general approval of the Council, but nothing definite had been settled.

After some further conversation the Council divided.

Ayes 6.	*Noes 5.*
The Hon'ble Baboo Kristodas Pal.	The Hon'ble Sir Stuart Hogg.
" Nawab Syed Ashgar Ali.	" Mr. Dampier.
" Moulvie Meer Mahomed Ali.	" Mr. Reynolds.
" Mr. Brookes.	" Baboo Juggadanund Mookerjee.
" Mr. Bell.	" Baboo Ramshunker Sen.
" the President.	

The motion was therefore carried

The HON'BLE SIR STUART HOGG said that he had next to propose that the following paragraphs be inserted at the end of Section 11 :—

"If any person is elected a Commissioner for more than one of the said wards, he shall, within three days of the date of the election, choose, or in default thereof, the Chairman shall forthwith declare the ward for which such person shall serve; and such person shall thereupon be held to be elected in that ward only which he shall so choose, or which the Chairman shall so declare; and thereupon the rate and tax-payers of the other ward or wards in which the said person has been elected a Commissioner shall forthwith proceed to elect another Commissioner in the manner provided by this Act.

"Where an equality of votes is found to exist between any two candidates at any election under this Act, and the addition of a vote would entitle any of such candidates to be elected a Commissioner, the Chairman may give such additional vote, and the candidate to whom such additional vote has been given shall thereupon be held to be elected a Commissioner."

The first clause merely provided for cases which were likely to occur of one gentleman being elected for more than one ward. In the second clause, provision had been made for the possibility of an equality of votes, and the clause would enable the Chairman in such a case to decide which of the two candidates should be elected.

The HON'BLE BABOO KRISTODAS PAL said that the first amendment he had to move was that the word "five" be substituted for "three" in the first clause. It was possible that a man might not be in Calcutta at the time of his election, and three days, therefore, was too short a period within which he should come to a decision.

The HON'BLE SIR STUART HOGG said that he accepted the amendment; he had no objection to "five" being substituted for "three."

The HON'BLE BABOO KRISTODAS PAL said that he next objected to the words "the Chairman shall forthwith declare." He was of opinion that the matter had better be left to the choice of the person elected.

The HON'BLE THE PRESIDENT pointed out that the clause which the hon'ble member objected to was in the form of an alternative. If the choice, which was left to the person elected, was not availed of within the period mentioned, it was then only that the Chairman could decide.

The HON'BLE MR. BELL said that he believed some misapprehension existed in consequence of the words "shall declare." As had been pointed out by the Hon'ble the President, there was nothing whatever to interfere with the right of selection which might be exercised by the person elected for two wards, and it was only in case he did not exercise his right within the time named that the Chairman could decide. There could be no possible objection to this power being vested in the Chairman; and if the person elected had no intention of being a Commissioner at all, he might simply resign when the Chairman's decision was made known.

The HON'BLE BABOO KRISTODAS PAL said, if the Council did not think there was anything objectionable in the clause, he would not press his amendment. With reference to the second clause, regarding equality of votes, he thought that in such a case lots should be drawn to decide which of the two persons elected should sit as a Commissioner, instead of the casting vote being given to the Chairman, who would not be one of the electors. He therefore moved an amendment to that effect.

The HON'BLE MR. BELL thought that at home the question was decided by the drawing of lots.

The HON'BLE SIR STUART HOGG said he believed that the "tellers" at home gave the casting vote in cases of equality of votes. Here, however, he thought that the decision should be left to the Chairman.

The HON'BLE THE PRESIDENT thought there would be no harm in this power being vested in the Chairman, considering the extreme improbability of such cases being of frequent occurrence.

The amendment was then put and negatived, and the original motion was agreed to.

Section 12 provided, among other things, that the Lieutenant-Governor should have power to make rules "for the purpose of regulating elections."

The HON'BLE SIR STUART HOGG moved that, after the word "elections," the following words be inserted:—

"And may declare the penalties which shall be incurred by the breach of any of the said rules, and may at any time cancel or modify any of the said rules. The expenses of all elections under this Act shall be paid out of the Municipal Fund."

The first part of the amendment merely enabled the Lieutenant-Governor to declare the penalties incurred for breach of any rule which, under Section 12, it was proposed to empower him to pass, and the second clause was to enable the Commissioners to pay the expenses incidental to election.

The HON'BLE MR. BELL doubted, with regard to the first part of the amendment, whether the Council could empower the Lieutenant-Governor to declare penalties; that is, he doubted whether penalties could be legally imposed under rules so framed. He thought it would be better if the consideration of the matter stood over.

The HON'BLE MR. DAMPIER asked whether the hon'ble member thought there was any distinction in this respect between the power given to Municipalities to frame bye-laws which required the approval of the Lieutenant-Governor, and this power which it was proposed to give to the Lieutenant-Governor.

The HON'BLE MR. BELL said that he had not come to Council to discuss the subject, and was therefore not prepared to give a definite opinion on the case put; but it appeared to him that there was a very great distinction between the cases mentioned by the hon'ble member and the general power which it was proposed to give to the Lieutenant-Governor under this amendment. When under the Municipal Acts power was given to municipalities to frame bye-laws, it was always clearly laid down for what specific purposes those bye-laws were to be framed, and a limit was always fixed as to the amount of penalty to be incurred for a breach of such bye-laws. In the amendment proposed however, the power of the local Government to frame rules and to impose penalties was unrestricted and unlimited.

The HON'BLE THE PRESIDENT said that he believed the hon'ble member's objection was a valid one so far as the imposing of a maximum penalty was concerned. He thought the consideration of the matter had better be postponed.

After some further conversation, the insertion of the words "and may at any time cancel or modify any of the said rules" was agreed to, and the consideration of that portion of the clause, empowering the Lieutenant-Governor to declare penalties, was postponed.

Section 16 provided that an erroneous omission from, or entry in, the list of voters should not affect an election.

The HON'BLE SIR STUART HOGG moved that at the end of the section the following words be added:—

"And no election shall be deemed to be invalid by reason only of any defect of form in the conduct thereof."

The motion was put and agreed to.

The HON'BLE SIR STUART HOGG moved that the following section be inserted after Section 18:—

"(18*a*) Whoever, being qualified to vote, or claiming to be qualified to vote, at any election under this Act, accepts, or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification whatever, as a motive or reward for giving, or forbearing to give, his vote in any such election, shall be liable to a fine not exceeding one hundred rupees for every such offence, and shall for ever be disqualified from voting at any such election, and from being elected a member of the said Corporation.

"And whoever, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupts or procures, or offers to corrupt or procure, any person to give, or forbear to give, his vote in any such election, shall be liable to a fine not exceeding five hundred rupees for every such offence, and shall for ever be disqualified from voting at any such election, and from being elected a member of the said Corporation."

The motion was put and agreed to.

Sections 312 to 314 related to licenses for markets.

The HON'BLE BABOO KRISTODAS PAL said that, on reference to Sections 312 and 313 of the Bill, he found that they were so worded that markets established even before Act VIII (B.C.) of 1871 was passed might be closed at the discretion of

the Municipal Commissioners. He believed such was not the intention with which the sections were drafted, but owing to the omission of certain words occurring in the existing law, the present sections would have the effect to which he had drawn attention. As he entered the Council room that morning, he was shown a communication addressed to the Council by several influential native gentlemen, who were proprietors of some of the markets in the town. As the communication was short, and had only been received that morning, he would, with the permission of the Council, read the principal portions of it.

The petitioners said:—

"We, the undersigned, proprietors of markets in the Town of Calcutta, beg leave to draw the attention of the Hon'ble the Lieutenant-Governor in Council to the provisions in the Calcutta Municipal Bill relating to markets.

"Act VIII of 1871 makes a distinction between existing and new markets. With regard to present markets, Section 6 requires that they are to be registered, and, with regard to new markets, Sections 1 to 3 provide that they are to be licensed under the conditions mentioned therein. All markets are equally subject to sanitary regulations, but the licensed markets—that is, new markets—are liable to be closed by order of the Justices (Section 5), if the owner thereof be convicted three times under Section 4.

"The reason of this distinction is obvious. Considerable capital has been invested in markets by private individuals: some of them have been in existence for more that half a century, if not longer; and, if it were left to the discretion of the Municipal Commissioners to grant a license or not, and, if it were ruled that old markets may be closed on three convictions, it would be tantamount to a confiscation of private property, particularly as a motive for competition with them has been supplied to the Municipality by empowering it to appropriate the municipal funds to speculations of this kind."

The petitioners then went on to argue their case, and concluded as follows:—

"Accordingly, we would humbly pray that His Honor in Council would be pleased to exempt existing markets from the operations of Sections 312, 313, and 314 as at present."

He need not say much in illustration of the views and arguments set forth in the memorial. The hon'ble mover of the Bill was aware that old markets, existing before the Act of 1871 was passed, required only to be registered, while new markets—that was to say, markets established after 1871—required a license which it was in the discretion of the Justices to grant or not. But with regard to old markets the Justices had no discretion whatever; they could only enforce sanitary regulations with a view to keep markets in a proper condition, and these sanitary regulations had hitherto been found quite sufficient. When the present Bill was drafted, the Select Committee were under the impression—at least he for one was under that impression—that the existing law on this subject was simply to be re-enacted. But his attention was only last week drawn to the provisions in the Bill by some of the signatories to the memorial, and he found that the omission of certain words, which were in Section 4 of Act VIII of 1871, had produced the alarm, dissatisfaction, and complaint under notice. The words which had been omitted were "unless such place shall have been used as a market for the sale of such articles at the time of the passing of this Act." That was to say, if a market had been in existence before the passing of Act VIII of 1871, then three convictions would not justify the Justices in closing the market; *i.e.*, three convictions for

not taking out a license. The corresponding section in the Bill, Section 312, gave power to the Commissioners to grant licenses for markets, by which was evidently meant new markets. But the next section (313) provided that whoever used a place as a market which was not licensed under this Act would be liable to a fine not exceeding Rs. 200, and the following section (314) provided that whenever three convictions should have been pronounced under the preceding section in respect of the same place within the space of one year, the market might be closed. Now, the old markets did not, under the existing law, need a license, but this was not distinctly stated in the present Bill. He believed that the omission was due to an oversight; but anyhow the re-enactment of the old law was necessary, in order to do justice to the proprietors of old markets who had vested interests in them. He had therefore given notice of his intention to move that the following words be inserted after the word "Act" in Section 313:—"Unless such place shall have been used as a market for the sale of such articles at the commencement of Bengal Act VIII of 1871 or of this Act." He believed the words *or of this Act* would be objected to, and he would not therefore press that point. At the same time he ought to mention that the hon'ble mover of the Bill had suggested another amendment to follow Section 313, which was as follows:—"Provided that the provisions of this section shall not apply to markets registered under Section 6, Act VIII (B.C.) of 1871." He did not care which amendment was carried, so long as the object of the petitioners was gained.

The HON'BLE MR. DAMPIER pointed out that neither of the two amendments would fully meet the objections of the petitioners.

The HON'BLE MR. REYNOLDS asked whether the hon'ble mover was prepared to accept a similar proviso to Section 281, which enacted similar provisions as to slaughter-houses. It appeared to him that the principle was the same in both; the provisions which applied to markets equally applied to slaughter-houses.

The HON'BLE THE PRESIDENT observed that the licensing of slaughter-houses and markets stood on an entirely different footing. What might be absolutely and imperatively necessary in regard to slaughter-houses might not be necessary for markets. All markets were supposed to be kept in a comparatively clean state.

After some conversation, the principle urged by the HON'BLE BABOO KRISTODAS PAL was accepted by the Council, and, at the suggestion of the Hon'ble the President, the matter was postponed, with a view to the sections being re-drafted.

The HON'BLE SIR STUART HOGG said that Section 331 provided that "the Commissioners shall set aside yearly out of their annual income, before making any disbursements in respect thereof, a sum of not less than two per cent. on the total sum borrowed by the Commissioners for the purpose of any enactment hereby expressly repealed, &c." But it did not provide that the interest on the debt should be a first charge, because it was considered that the fact of the Justices having signed the debentures was sufficient security for the payment of the interest. But this was objected to by the hon'ble member opposite

The Hon'ble Baboo Kristodas Pal.

(Mr. Bell), who urged that the interest on the debentures, as well as the sinking fund, should be made a first charge on the Municipal Fund. In order, therefore, to meet that objection, he had now to move that after the word "thereof" in line 4 of Section 331 the following words be inserted:—

"*Firstly.*—Such sum as may be required for the payment of the interest which may fall due on any debentures issued under the authority of this Act, or of any enactment hereby expressly repealed; *secondly.*"

The motion was put and agreed to.

GHATWALI POLICE (BANCOORAH).

The HON'BLE MR. BELL postponed the motion which stood in his name for leave to introduce a Bill to regulate the Ghatwali Police in the district of Bancoorah. On reading through the papers which had been sent to him, he found that the information which they contained was not sufficiently explicit to enable him to make a satisfactory statement to the Council of the objects and reasons of the Bill.

The Council was then adjourned to Saturday, the 18th instant.

Saturday, the 18th March 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYED ASHGAR ALI DILER JUNG, C.S.I.

PARTITION OF ESTATES.

The HON'BLE MR. DAMPIER presented the report of the Select Committee on the Bill to make better provision for the partition of estates paying revenue to Government in the Lower Provinces of the Presidency of Fort William in Bengal. The Council were aware that this Bill had been in its settlement a serious matter. The Select Committee or the mover of the Bill had been in constant communication with those officers throughout Bengal who were to the greatest extent employed in making partitions, and who were most familiar with the subject of the Bill. The Select Committee had had to grapple with most difficult subjects, which he had mentioned in his speech asking leave to introduce the Bill. And he had great satisfaction in saying that they had been able to come to an unanimous agreement, he might say, in all

important points. In the Committee's report the changes made in the Bill had been very fully set out, and he should only mention the most important of them.

The Committee had in the Bill laid down a procedure for these intricate cases; they had adopted the principle that a recorded proprietor, who was in possession of the share in respect of which he was the recorded proprietor, and as such only, was entitled to apply for the partition of an estate. On the other hand, they had allowed unrecorded proprietors, persons who claimed rights as proprietors but who were not recorded on the Collector's register, to come forward and make objections, because it was most inconvenient in these protracted and intricate cases to have objections of any kind, which were really valid and worth attention, deferred until the case had proceeded to the later stages.

The Committee had provided that no partition should be made which would result in the formation of a separate estate liable for an annual amount of revenue less than Rs. 20, and of which the assets would be less than Rs. 200, unless the proprietor of such estate agreed to redeem the revenue for which such estate would be liable by a capitalized payment at such rate as the Lieutenant-Governor may determine with reference to the circumstances of the estate. This was provided with the view of stopping the splitting up of estates almost into fields which was going on in Tirhoot, and perhaps in other districts. Hitherto it had been ruled by the High Court, and the ruling had the effect of law, that no batwarah of an estate could be made under Regulation XIX of 1814, if a private partition had been made between the proprietors of an estate, a private partition of lands which constituted a joint undivided estate as regards the responsibility for land revenue. The Committee had remedied this, and had provided that where a private partition of the lands existed, if all the parties agreed in making a joint application, the Collector might give effect to an amicable division of the land under the provisions of this law. And more than this, they had provided that when such a private division of land was accompanied by a private arrangement as to the amount of revenue for which each proprietor's share should be liable, the Collector might accept and recognize under the law an amicable division of the jumma as well as an amicable division of the land when this could be done without danger to the public revenue. If, on the other hand, it would endanger the revenue, the Collector might refuse to make any partition of such estate under this Act, unless the parties agreed to allow the revenue on each separate estate to be assessed in proportion to the assets of each separate estate, according to the ordinary principle.

On one point the Committee had made a material alteration in the existing law. Under the existing law, as soon as an estate was admitted to separation, separate accounts were opened in respect of the different shares, and from that moment the share of each proprietor became answerable only for its proportionate share of the land revenue. Now, the Committee had provided that nothing in this law should relieve any part of the lands constituting a parent estate from their liability for the entire land revenue

The Hon'ble Mr. Dampier.

assessed upon such estate until the partition proceedings were completed, and each party was put in possession of his share. Although that was an alteration of the butwarah law, it did not put proprietors in any worse position than they were now. The Committee had not thought it necessary to make any mention in this Bill of this mode of protecting shares during the progress of the partition proceedings, because there was another law—Act XI of 1859—which afforded the means of such protection by opening separate accounts with the Collector. The Bill as now drafted merely came to this, that in order to protect their shares in such cases, proprietors must avail themselves of the provisions of Act XI of 1859.

Under the old law, if any person claiming to be a proprietor disputed the extent of the right which the applicant for partition declared himself to hold, that was enough to bar any further proceedings. The Committee had provided that when any such objection was made to the extent of interest claimed by the applicant, or a question of right and title was raised as between the applicant and other persons claiming to be proprietors, it should be in the discretion of the Collector either to refuse to make the partition, (which he would naturally do when it appeared to him that the objector's claim was based on good grounds,) or, if satisfied that the applicant was in possession in accordance with his claim, to direct that the partition should proceed in accordance with the applicant's claim, (which course the Collector would probably adopt if he was impressed with the idea that the objector's claim to right was frivolous,) or to direct that the proceedings be postponed for four months, in order to give the objector an opportunity of instituting a suit to try the question in dispute (which the Collector would probably do if he thought that there was a fair chance of such a suit resulting in favor of the objector). If the objector availed himself of these four months allowed to him, the decree might place him in the position of a joint sharer in the entire parent estate. But if the claimant of the disputed share—the objector to the partition proceedings who was not in possession—omitted to institute a suit within the four months allowed to him, but did institute such a suit afterwards and got a decree, that decree would be subject to the partition proceedings, and would have to state in which of the separate estates created out of the parent estate the decree was to be enforced, and to what extent it was to be enforced in each.

Part IV of the Bill was absolutely new. It treated of establishments under the Act, the payment of the establishments, and the levy of their cost from the parties to the partition proceedings.

Then, in Part VII, the Committee had made what they hoped would be an important improvement. Heretofore, under the old law the ameen, the man appointed to measure the lands and draw up the papers, was also allowed to indicate how the estate should be divided; to suggest in a rough way that A should have his lands allotted to him on the south-east and B's in the south-west, and so forth. This power was notoriously abused by men in the position of ameens. The Bill provided that the ameen should merely measure the lands and ascertain their rental. Having done that, the Deputy Collector was

himself to decide in what general direction the parent estate should be divided and where each sharer's lands should lie.

One great point of dissatisfaction in a butwarah had been when the dwelling-house of one of the proprietors fell in the estate of another proprietor. It was very much against native feeling for one proprietor of what had been a joint estate to be the tenant of another. The Committee had provided that in such cases, where the dwelling-house of a proprietor fell in the estate of another proprietor, the land occupied by it should be assessed at a fair rental, which should be fixed in perpetuity by the Deputy Collector; and not only so, but when the rental had been so fixed, the Committee had given power to the owner of the dwelling-house to redeem the rental so fixed by a capitalized payment at once. So that if it was unavoidable that one proprietor should have his dwelling-house and its immediate grounds in another proprietor's estate, he might still hold it as a rent-free tenure if he chose to do so.

The Committee had dealt with the very difficult question of lands which were held on a permanent tenure created by all the proprietors of the estate. It was one of the cruces with which they had to deal, and they had come to an unanimous opinion upon it.

Another difficulty was as to lands claimed both by the proprietor of the estate to be brought under partition and the proprietor of a neighbouring estate; the Committee had also made provisions which they hoped would clear up that difficulty.

They had empowered the Collector, after breaking up the parent estate into separate estates, to cause the proprietors to put up boundary marks around each estate so as to preserve them intact in future, and these marks were to be maintained under the Bengal Survey Act of last year.

They had provided that all sums payable under the Act should be levied as demands under Bengal Act VII of 1868.

They had defined very carefully what orders of the Collector, of a Deputy Collector, and of a Commissioner should be appealable as of right to the superior revenue authorities, but had given a general power of supervision, control, and revision to the Board of Revenue and the Commissioner over all the proceedings and orders of the subordinate revenue authorities, and they had defined carefully what orders of the revenue officials under the Act should not be liable to be contested in the Civil Court or otherwise than before the revenue authorities.

The Bill was so entirely different from what it was when it was referred to the Select Committee for consideration, that he must refer hon'ble members to the draft itself for further details. The Bill should be in the hand of the members to-day, and it might be considered at the next meeting of the Council.

The HON'BLE BABOO KRISTODAS PAL said the Bill had been carefully considered and settled by the Committee. If the Bill was published for general information for a reasonable time, those interested might send in representations on the subject. He knew that several persons interested in this Bill did not

The Hon'ble Baboo Kristodas Pal.

think proper to send in communications to the Council, because they understood that the Select Committee were making material alterations in the Bill, and they had deferred submitting their opinions until the report of the Committee was published.

INQUIRY INTO RENT DISPUTES.

The HON'BLE MR. DAMPIER presented the Report of the Select Committee on the Bill to provide for inquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances. He said the Committee had felt some difficulty in regard to the question of the powers of this Council to legislate in the matter. But after a good deal of consideration and discussion these have been solved, and they had no doubt that the Bill in its present form was within the power of this Council.

The alterations made by the Select Committee were chiefly in the form and wording of the Bill; the substance was very much what it was when the Bill was referred to the Select Committee. The scheme of the Bill was that when the Lieutenant-Governor should consider that there was a dispute regarding rents of sufficient importance to warrant his taking action under this special law, and when any of the persons concerned should apply to him to take such action, the Lieutenant-Governor should be able to declare that this special procedure (for it was purely a Procedure Bill) should be enforced in any specified tract. Then (it being assumed that there was some general question underlying the dispute) the Lieutenant-Governor was required to state those matters of fact which should be ascertained by a general inquiry to be made by the Collector. The Collector would then make his inquiry for which the Bill laid down the procedure, and would give the parties an opportunity of seeing his report and making their objections. The report and objections would be considered by the Commissioner and Board of Revenue, and the Board would come to a finding (practically the finding would in effect be the Board's, although the Collector was required to make the formal order according to the instructions of the Board) on those general matters of fact which had been referred for determination by such general inquiry, whereupon rent suits and suits connected with rent of every kind under Section 23 of Act X of 1859 would become cognizable by the Collector under this special jurisdiction, and would not be cognizable by the Civil Courts under Act VIII of 1859, until the Lieutenant-Governor declared the tract to be no longer under this special procedure. The Collector would then try such suits, and all his findings must be in accordance with the determination of matters of fact in the general inquiry by the Board of Revenue so far as such determinations were applicable to such suits before the Collector.

In giving the appellate jurisdiction, the Committee had mainly followed the scheme of Act X of 1859. Where there was simply a question of rent under a certain amount, the Collector's decision was final. Where a question of right or title or enhancement or abatement of rent was involved an appeal was allowed, but instead of giving the appeal, as under Act X of 1859, to the Judge of the district, the appeal would lie to the Commissioner, and if the sum

in dispute was above Rs. 5,000, a further appeal would lie to the Board of Revenue.

There was one other point in the Bill which he would notice. If the Collector found in a suit that some question was involved which might better be tried by the Civil Court, he might refer the suit to the Civil Court; and if the matter in dispute also involved a question of rent which the Collector could best determine, then, before referring the suit to the court, he would determine that question of rent, and the Civil Court would be bound to accept that determination in its final decision of the suit which had been referred to it.

There was one point in which there had been much difference of opinion in the Select Committee, and on this two of the members had recorded a dissent. It was very much pressed upon the Committee that they ought to insert some sort of rule in the Act by which the Collector should be guided when he found it necessary to fix the rate of rent payable by occupancy ryots. He for one thought that if a good practical rule could have been fixed upon, it would have been a good thing. But the Committee had found it impracticable to do so; and if it was remembered that this was a procedure Bill, the defect would not seem to be so great. For instance, he saw that his hon'ble friend opposite (Baboo Kristodas Pal) said in his dissent to the report—

"It is absolutely left to the discretion of the Collector, or rather the Deputy Collector, to settle the principles on which the rent is to be fixed. This means the suspension of law and the promulgation of discretion, to which I cannot too strongly express my objection."

MR. DAMPIER desired to point out that this was a procedure law. Whatever discretion there was, was a discretion which was allowed by the existing law, Act X of 1859, the principles of which remained fully in force, and to these, whatever they might be, vague as they were, the Collector was bound to adhere. This Bill gave the Collector no more latitude in determining a question of enhancement according to his discretion than every moonsif already exercised under the existing rent law. The rule laid down by the existing law was a fair and equitable rate, and according to this Bill enhancement or abatement of rent could only be determined at a fair and equitable rate.

The rule was neither made more strict nor more lax in this respect.

With these remarks he begged to present the report of the Select Committee.

The HON'BLE BABOO KRISTODAS PAL said that as he had recorded a dissent, he thought it his duty to state his reasons for having done so. When the Bill was originally introduced, he thought it his duty to support it, at the same time expressing a hope that the Select Committee would find their way to some provision for the settlement or determination of rates of rents, leaving as little as possible discretion to the Collector on the subject. This question was very carefully discussed in Committee, and he was sorry to say that the majority came to a conclusion which was against the adoption of any principle in the Bill for the determination of rates of rent. He had not seen the report of the Committee until that morning, and therefore could not fully allude to the reasons advanced by them in recording his dissent. But his general opinion on the subject being well known to his colleagues in Committee, he

The Hon'ble Mr. Dampier.

thought it proper to embody it in the dissent he had recorded. The hon'ble member in charge of the Bill had pointed out that this was a procedure Bill, and did not affect the principles contained in Act X of 1859 for the determination of rates of rents. If the hon'ble member would refer to the history of the rent disputes which had led to the introduction of the present measure, he would find that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a dead lock, and that it had therefore become necessary for the legislature to step in and propose the present law. If Act X of 1859 had worked satisfactorily; if it had not led to considerable misunderstanding, misconception, and mischief, he did not think there would have been any necessity for introducing the present measure. On the one hand, the ryot did not know what he was liable to pay, and on the other hand the zemindar did not know what he was entitled to receive as rent in consequence of the admitted rise in the value of produce: the result was that both quarrelled and went to the Civil Court for adjudication of their disputes, which in its turn was surrounded with great difficulties, and did not know exactly what to say or lay down. Look to the variety of the decisions passed by the different Civil Courts in the country on the subject, and you would find that they were a series of contradictory decisions, conflicting rulings, and inconclusive conclusions. A full bench of the High Court had laid down a principle for enhancement of rent which both judges and lawyers agreed in holding was simply unworkable, and a better proof of the impracticability of carrying it out could not be afforded than the state of litigation in the country at present on the subject of rent suits. The head of the Government of Bengal had acknowledged this unsatisfactory state of things in the last Administration Report, and pointed out that unless the principles on which rents should be fixed were settled, the present state of things would probably grow from bad to worse. He believed he might state without breach of confidence that the Government were laudably engaged in making investigations from local officers and others competent to advise, with a view to come to some definite principles for the determination of rates of rent. Now, while public opinion, both official and non-official, seemed to be unanimous in so far that the present law was indefinite and confusing, and therefore unsatisfactory, he asked—was it wise or advisable to refer the Collector back to those very principles in the Act which had produced the present confusion? Would this procedure, he would ask, contribute to the settlement of those disputes which the hon'ble member in charge of the Bill had characterized as a scandal to good government? He questioned the wisdom of this proceeding; and entertaining this opinion, he strongly urged upon his colleagues in Committee the necessity of laying down some fair and equitable principle for the settlement of rates of rent; and if the Council was not prepared to come to an agreement upon the subject, he would recommend that the scope and object of the Bill should be limited to the realization of arrears of rents, the question of fixing the rates of rent being left to the Civil Courts for determination as heretofore.

The object of the Bill, he might observe, was twofold—*firstly*, the settlement or adjustment of rents, and *secondly*, the realization of rents. Now, the

adjustment of rents could not be effected without settling the rates of rent, but the realization of rents could be facilitated by amending the existing procedure and vesting the Collector with a summary power. There could be no doubt that when the ryots combined and resisted the payment of rent, the zemindar was put to great difficulty and trouble. In fact, when the combination was widespread, the zemindar could not collect his rents, and could not meet the Government revenue without borrowing money. This state of things could not but be deprecated; and he believed that as regards the collection of arrears of rent, if the Bill were made effectual so as to help the zemindar in realizing arrears of rent, the object would be sufficiently attained. It might be a question as to what was or what was not an arrear of rent; that was to say, whether or no the existing rate of rent was disputed by the ryot. But questions of this kind were as likely to arise before the Civil Court as before the Collector; and in the same way as the Civil Court decided them, the Collector might decide them in a district proclaimed under the Bill. It was certainly desirable that the rates of rent should be adjusted by the Collector, but there seemed to be so many difficulties in the way, and so much divergence of opinion, that perhaps it would be better as a procedure measure to confine the Bill only to the realization of rent. As the Bill was framed, it might, he was afraid, lead to greater evil than good. He might mention that the reasons which had called for the Bill some six or eight months ago did not now exist, through the wise, discreet, and moderate action of the executive authorities; that disputes formerly existing between the zemindar and the ryot in some of the eastern districts had been to a considerable extent amicably settled; and that a better spirit now prevailed than what had prevailed two or three years ago. But it might be said that the fire was only smouldering; that it might again break out, and who knew how far it might extend; and that it was therefore necessary to be forearmed. Taking that view of the case, he suggested that the Bill ought to be confined to the particular object of facilitating the realization of arrears of rent, and that the large, difficult, and complicated question of adjustment of rents might be left to be dealt with thereafter by legislation. He was confident that the legislature, under the guidance of the present head of the Government, would be able to come to some satisfactory conclusion as to the principles on which rates of rent should be fixed; and once the general law was amended, both as to the principles upon which the rent was to be fixed and the facilities to be given for the realization of rent, matters might be left to themselves. On these grounds he still hoped that the question of the adjustment of rent might be left out of the Bill, and that it might be restricted to the realization of arrears of rent only.

He hoped that the Bill would not be hastily proceeded with. It was a most important measure, and ought to be carefully considered. It was true that the Bill had been before the public for some time. He knew that the landed classes had taken considerable interest in it; they had already expressed their opinions upon it more or less strongly, and it was very desirable that sufficient time should be given to enable them to consider the Bill as amended by the Select Committee.

The Hon'ble Baboo Kristodas Pal.

The HON'BLE MR. BELL said, as a member of the Select Committee on the Bill, he wished to make one or two observations in reference to what had fallen from the hon'ble member who had just spoken. The hon'ble member had correctly said that there were two points of difference which existed between the members of the Select Committee. The first of these points was whether the Bill should be confined to the realization of arrears of rent at existing rates, or whether it should attempt to adjust and settle existing disputes; and secondly, whether or not we should lay down some general principles to guide the Collector in arriving at the determination of what a fair and equitable rate of rent was. On the latter point, the majority of the Committee were of opinion that we ought to leave the law as it stood. The object of the Bill was merely of a temporary nature: it was in no way intended to repeal or alter the provisions of Act X of 1859; and the question was whether, in a measure of this sort, which was rather a measure of procedure than of principle, we ought to change the substantive law of the land. The majority of the Committee were convinced that if we were to attempt to introduce in a Bill of this sort any fresh principles of legislation, we should have the whole country up in arms. Instead of adjusting disputes, we should simply be fomenting discord. Any one zemindar would be desirous of testing these new principles, and we should have an enhancement suit instituted throughout the whole of Bengal; and the Bill would promote the very evils which it was intended to allay.

With regard to the adjustment of the rates of rent, it seemed to the Committee that if the Collector was authorized to settle disputes, it would be impossible to limit his discretion to enquiries into the rates of rent which the ryots had previously paid. It would be extremely unfair to the zemindar to compel him to accept rents at the old rates if he was entitled to higher rates, let alone that it was almost impossible in some cases for the Collector to determine what the previous rates were. It seemed to the majority of the Committee that, to enable the Collector to deal effectually with the questions referred to him, it was absolutely necessary for him to enquire into all the relations between the landlord and his tenants. What was wanted was not a one-sided Bill, but a just measure to provide for a fair and equitable adjustment of disputes between zemindars and their ryots.

The hon'ble member had stated that he objected to the vast amount of power and discretion which the Bill placed in the hands of the Collector. But MR. BELL would remind the Council that the Bill really gave the Collector no greater power or discretion than was at present exercised by the Civil Court. The Bill seemed to him to be a very harmless one in every way, and the only object of the Bill was to allow the Collector to settle in a summary way what was now determined by the Civil Courts by the more dilatory process of a regular suit.

The only other point upon which he had to remark was with reference to what fell from the hon'ble member in regard to the present necessity of the measure. It seemed to the majority of the Committee that although fortunately no disputes at present existed in Bengal, it was desirable, in view of future complications, that a Bill of this sort should be passed. He felt sure the

Council, when the Bill was submitted to them, would agree with him that the Committee had attempted to frame as fair and equitable a measure to both parties as it was possible under the circumstances to do.

His Honor the President said: "I desire to point out at this stage of the measure that, in the opinion of the Government of Bengal, there is just as much reason to pass a Bill of this sort now as there ever was. It is true that some great disputes have been settled successfully (at least, so far as appearances go) by the executive authorities without the aid of such a law; but supposing any fresh disputes should arise, we cannot answer for our officers being always able to compose such quarrels. The Council will, I hope, remember that this is merely a Bill for conferring certain jurisdiction on the revenue authorities in the event of any emergency arising. The jurisdiction proposed to be conferred is no other than the substitution of a particular procedure for that which now obtains in the Civil Court; and from that point of view it seems very undesirable in a measure of this kind to introduce anything relating to substantive law. This was justly pointed out by the hon'ble mover when he spoke of this Bill being in the nature of a procedure Bill. It is a Bill for conferring a certain jurisdiction upon certain officers. That, I need not point out, is a very different thing from introducing any principle of substantive law.

"As regards the substantive law relating to rent, I entirely concur with the hon'ble member on the left (Baboo Kristodas Pal) that it would be truly one of the greatest blessings that could be conferred on Bengal if some principle for determining the rates of rent could be fixed by legislation. But I need not point out that no more difficult question than that could be presented to a local legislature. It is true that the subject is under the anxious consideration of the Government, but whether we shall be able to arrive at a conclusion in which all the different parties interested can concur, is more than I can say at the present time. I can promise that the best efforts of the Government will be directed to that object. But I have to say most distinctly at the present stage of the Bill, that whether such substantive law for the determination of the rates of rent can be arrived at or not, this Bill for the transfer of the jurisdiction for the determination of urgent questions is necessary.

"If such substantive law shall be arrived at fortunately, regarding which I entertain much doubt, even then this Bill will be necessary. If, as is more probable, we shall not succeed in arriving at any substantive change in the law, then the Bill will be needed even still more.

"With these remarks, I will express my hope that the Council will at an early date take into consideration this important measure, though its importance is strictly limited to the mode of deciding rent disputes, and not to the principles upon which they are to be adjusted. A Collector or any other revenue officer will be in no worse position than the Civil Court as regards the substantive law of rent; but we believe, on the other hand, that the Collectors and other local officers will be in a much better position, by their local knowledge and other facilities, than the Civil Courts can be for deciding these rent suits. I say that without the slightest disparagement to the Civil Courts. The Civil Courts have always decided in peaceful times and under ordinary

circumstances perfectly well. But when angry disputes arise between large landed classes, then it will be impossible for the Civil Courts, who have to observe all the formalities of the Civil Procedure Code, to settle such disputes in time; and before a legal decision can be arrived at, immense excitement might spread over the country and a great deal of mischief be done; and it is therefore that this Bill, purely of jurisdiction and procedure, is proposed for the consideration of the Council."

CALCUTTA MUNICIPALITY.

THE HON'BLE SIR STUART HOGG said it would be in the recollection of the Council that several memorials were received objecting to the controlling clauses as contained in sections 21, 22, and 58 of the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta. The memorialists seemed all unanimous in approving of the principle of election as set forth in the Bill. But they urged that the power which the Government proposed to retain to itself to control the action of the Municipality was not consistent with a free elective system. The Council then referred the Bill back to the Select Committee, with the view of seeing how far it was possible in a measure to meet the wishes of the memorialists by modifying the control sections 21, 22, and 58.

By section 21 the duties to be performed by the Municipality were laid down in somewhat general terms. By section 22 a general power was given to the Government to interfere in the event of the Municipality not carrying out the works specified in general terms by section 21. And by section 58, in order to place the Municipality in funds to carry out the orders passed by the Government, power was given to the Government to raise the rates by a notification in the *Calcutta Gazette*.

The Select Committee now proposed to do away with section 58, which enabled the Government to raise the rates by an order issued in the *Calcutta Gazette*, and instead of declaring in general terms the duties which the Municipality should perform, the Committee proposed to set forth in section 21 in very specific terms those works which the Municipality must carry out, namely, to provide for the payment of interest on the debentures and loans from Government and the formation of a sinking fund; to maintain the police sanctioned by Government; to carry out the new underground drainage works now under construction; to maintain an efficient water-supply; to make adequate and suitable provision for conservancy; and to provide the funds necessary for these purposes. By section 22 the Committee proposed that the Government should be empowered, in the event of suitable provision not being made for carrying on the conservancy of the town, to appoint Commissioners to see how far the arrangements of the Municipality were defective, and whether they were defective to such an extent as to be prejudicial to the health of the inhabitants of the town; and in the event of the Commissioners appointed reporting that the arrangements were so defective as to be prejudicial to health, then, and only then, the Government was to be empowered, in the event of the Municipality declining to carry out the recommendations of the Commission,

to order the Municipality to carry out such recommendations as might be made by the Commission.

He begged to place the report of the Select Committee before the Council, and to move that the recommendations of the Committee be adopted, namely, that section 58 of the Bill be omitted, and that sections 21, 22, and 22A be substituted for sections 21 and 22.

His Honor the President declared the motion to be unanimously agreed to, and in making that announcement he desired, on behalf of the Government of Bengal, to intimate his entire acceptance of the recommendations of the Committee, and to express his great satisfaction in being able to say so.

On the motion of the Hon'ble Sir Stuart Hogg the Bill was then taken into consideration in order to the further settlement of its clauses.

The Hon'ble Sir Stuart Hogg said the amendments which he had to move were all of a formal character; there was nothing fresh about them, but they were intended to give effect to what was decided upon at the last meeting of the Council.

It was then decided, on the suggestion of the hon'ble member opposite (Mr. Bell), that a person who paid Rs. 25 in rates and taxes on account of property in any ward should be entitled to vote in every ward in which he paid rates to that extent; also that a person entitled to vote in several wards should be able to give all his votes to one candidate, instead of, as proposed in the Bill, dividing his votes amongst the several Commissioners to be elected for the wards in which he was entitled to vote. With the view of giving effect to these conclusions, Sir Stuart Hogg proposed that section 7 be omitted, and the following be inserted as sections 7 and 7A :—

Number of Commissioners to be elected

"7. The remaining forty-eight members shall be elected as hereinafter provided by male persons resident within the Town or Suburbs, who shall have attained the age of twenty-one years.

Qualification of voters.

7A. Any person qualified as aforesaid who shall have paid, on his own behalf and not otherwise, to the Commissioners on or before the fifteenth day of January, in the year in which the election takes place, any of the rates mentioned in Chapter IV assessed on land or masonry buildings, or taxes mentioned in Parts I and II of Chapter III, or any of the said rates and taxes, for the next preceding year, to the aggregate amount of not less than twenty-five rupees, may vote in one only of the wards mentioned in section ten, and may choose the ward in which he resides, or in which his place of business is situated, or in which any of the said land or masonry buildings is situated.

Any person qualified as aforesaid, who shall have paid, on his own behalf and not otherwise, to the Commissioners on or before the fifteenth day of January, in the year in which the election takes place, any of the said rates for the next preceding year on account of land or masonry buildings situated in more than one of the said wards, shall be entitled to vote in each ward in which he shall have been a rate-payer to the extent of twenty-five rupees, and no such person shall be entitled to vote on account of any taxes paid under Parts I and II of Chapter III.

The word "land" in this section does not include huts erected on land."

The motion was agreed to—

The Hon'ble Baboo Kristodas Pal said that before the hon'ble mover proceeded to his next amendment he craved permission to propose the following

proviso to section 8, of which he had not had time to give notice:—"Provided that no officer of the corporation shall be qualified for election as a member of the corporation so long as he shall remain a servant of the municipality, except the Chairman and Vice-Chairman as hereinafter provided." It could not be right in principle that the officers of the municipality should be allowed to hold seats in the corporation as long as they remained in the service of the municipality: as officers they would have to carry out the orders of the Commissioners, and it could not be right that they should sit in the deliberative assembly. To compare great things with small, the members of the Indian Council were not allowed to hold seats in Parliament, though the question with regard to them was not so objectionable in principle. He would move this amendment subject to the amendment which stood in his name in another paper.

The motion was agreed to.

The HON'BLE SIR STUART HOGG moved the addition to section 10 of the following clause:—

"Every person qualified to vote under sections 7 and 7A may vote for as many candidates as there are Commissioners to be elected in the ward or wards allotted to such person under section thirteen, and may give all or any of the votes which he is entitled to give in any one ward to any candidate in that ward."

It was drawn in accordance with the resolution passed at the last meeting: it provided for the principle which was described as cumulating voting, and which was held to be very good and very desirable for such a city as Calcutta.

The motion was agreed to.

The HON'BLE SIR STUART HOGG said the next amendment was to enable the Lieutenant-Governor to prescribe penalties for breach of the rules to be framed in regard to the mode of election. It was objected to the clause he proposed at the last meeting that no limit was prescribed to the penalty which the Government would be empowered to inflict, and he had therefore proposed to fix a maximum of fifty rupees, which he considered would be sufficient; most of the rules would be mere matters of procedure and would require no penalty. The clause which he proposed to add to section 12 was as follows:—

"The Local Government may declare the penalties which shall be incurred by the breach of any such rule; and any person committing a breach of any such rule shall be liable to the penalty so declared, provided that no higher penalty shall be incurred by the breach of any such rule than a fine of fifty rupees."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said that the next amendment he had to move was also of a formal character, and was intended to give effect to the decision arrived at by the Council at the last meeting. The amendment was as follows:—

Section 13, line 8, to insert the following after "aforesaid":—

"and shall, at the same time, if he is entitled to vote in one ward only, name the ward in which he wishes to vote; and if he is entitled to vote in more than one ward, name the wards in which he is entitled to vote."

And the following after "list" in line 12 of the same section:—

"and shall allot to him the ward or wards which he may have named as aforesaid; and no person whose name is not entered in such list at the time of the election shall be qualified to vote or to be elected as a Commissioner.

"If the applicant shall omit to name a ward as aforesaid, the Chairman shall allot to him such ward as to the Chairman may seem fit, and if the applicant shall omit to name the wards as aforesaid, the Chairman shall allot to him the wards in which he is entitled to vote."

The motion was agreed to.

The HON'BLE SIR STUART HOGG said, at the last meeting he was directed to draft an amendment to section 312 which would have the effect of exempting all markets existing before the passing of Act VIII of 1871 from the necessity of obtaining licenses. In accordance with that resolution of the Council he proposed that the following words should be added to section 312 :—

"Nothing contained in this section shall be held to impose upon any person the obligation of taking out a license for a market which has been registered under section 6 of Bengal Act VIII of 1871."

And in section 313 he proposed the insertion of the following words after the word "town" in line 2 :—

("not being a market registered under section 6 of Bengal Act VIII of 1876")

The motion was agreed to.

The HON'BLE SIR STUART HOGG moved the substitution of the following for paragraph 2 of section 1 :—

"And it shall come into force on such date as the Local Government may direct, not being more than three months after the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General."

It would be impossible now to fix the exact date when the Bill should come into effect, because it would be impossible to know when it would receive the assent of the Governor-General. It was necessary that the Bill should come into force on the first day of a quarter, and the object of the amendment was to enable the Lieutenant-Governor to declare in which quarter it should come into force.

The motion was agreed to.

The HON'BLE MR. BELL said there were two amendments in his name, but they were both connected with one another, and he must therefore ask the Council to take both into consideration at the same time. Section 9 provided that where there was a joint family, a partnership, or a joint occupancy, which paid in the aggregate Rs. 50 in rates and taxes, any member of that joint family should be qualified to serve as a member of the corporation, and there was a proviso added, that the Chairman should decide which of the several members, partners, or joint occupiers was eligible for election, subject to an appeal under section 15. It was the proviso that MR. BELL proposed to omit. The section had been once before discussed in Council, but the hon'ble member in charge of the bill did not on that occasion see any necessity to make any alteration in it. But the section as it stood seemed so utterly ridiculous and absurd that he thought it would be a reproach to the Council if they allowed it to pass. He would give an illustration of the way in which the section would be likely to work. He would suppose that there were four members of a joint undivided family, who paid in the aggregate Rs. 50 in rates and taxes, each of these four members of the joint family being above twenty-one years of age.

Such being the case, they would all be eligible for election as members of the corporation. But the proviso said that the Chairman should decide which of them should be eligible, which must mean which of the members was most eligible. But of these four men we would suppose that one was an old man of 70, another a young man of 22, the third a fat man, and the fourth a lean one. Now, we would suppose that all these men were anxious to have the honor of representing their ward in the municipality, and they all presented themselves before the Chairman. But how was the Chairman to decide which was the most eligible? The Chairman might sympathize with age, and might consider that he might have less opposition from the old man than from the young man, as old persons were supposed to take life easier than the young. Then the young man would appeal to the Magistrate under section 15, and the Magistrate might take a very different view from the Chairman. The Magistrate might consider it very desirable to have in the corporation a young man fresh from college, who was prepared to discuss all questions from sanitation downwards at the shortest possible notice, and he would in that case reverse the decision of the Chairman. Again, the Chairman might select the fat man; but the Magistrate might prefer the lean man; and on that account the Chairman's decision might be reversed. He hoped the Council would not think that he was treating this subject with levity. His object was to illustrate the absurdity of the section in its practical working.

What he would suggest was that the member of a joint family, in whose name the rates and taxes were paid, should be deemed to be the person qualified to serve as a member of the corporation. Objection to that course was taken on the ground that in Calcutta the rates were in most cases paid in the names of deceased persons. MR. BELL did not suppose that a deceased person, even in this age of spiritualism, would desire to sit as a member of the corporation, and consequently in such cases the members of the joint family would not be able to avail themselves of the privilege of becoming Municipal Commissioners. His contention was, that if the members of the joint family did desire to avail themselves of the privilege, it was not too much to ask them to nominate from amongst themselves a member whom they wished to seat on the Municipal Board. Therefore he proposed to omit the proviso to section 9 altogether, and to add to section 13 the following proviso. Section 13 provided for the registration of voters and persons qualified to be elected, and to that he proposed to add:—

"Provided that no application made by a person who is a member of a joint family, a partner, or a joint occupier as described in section nine, shall be entertained unless such applicant shall be the person in whose name the rates or taxes are paid, or unless the other members of the joint family, or the other partners, or joint occupiers petition the Chairman to allow the registration of such person's name under this section."

The HON'BLE SIR STUART HOGG could not say that he had been able to follow the hon'ble member in the objection he had taken to section 9. Nor did he see that it would work in the absurd manner in which he anticipated. The hon'ble member first said that under section 9 every member of a joint undivided family which paid rates and taxes to the amount of Rs. 50 was

eligible for election. In the case put, SIR STUART HOGG thought the four members were not eligible. Under sections 9 and 11 the whole of the taxes must be paid by one person and not otherwise; it was only then that a person was eligible as a voter, or to be appointed a Commissioner; but under section 10 special provision was made for joint undivided families and partnerships. Four members of a joint family might in the aggregate pay taxes to the amount of Rs. 25 or Rs. 50; in the former case they would be qualified to vote, in the latter case they would not only be qualified to vote, but to stand for election as Commissioners. But paying jointly they would not be paying on their own account; therefore all the members of the family would not be able to vote or to be elected.

If the members of a family were unanimous as to the person who should represent them, it was obvious that the Chairman would not wish to interfere with the choice of the family. But if they were unable to agree in their choice, it became the duty of the Chairman to decide who was eligible. By the first clause of the section it was provided that only one member of a joint family should be eligible—not all the members, but only one; and then there was the second clause which said that the Chairman should decide which of these members was eligible. If the amendment of his hon'ble friend was carried, the effect would be that as the taxes in many cases were paid in the name of deceased persons, all those families would not have a right to vote, or to be elected, which the Bill considered they should have. For these reasons he would vote against the amendment.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble mover was quite correct in stating that he raised the question of extending the franchise to joint undivided families, for as the clauses relating to election had been originally framed, joint families would have been excluded altogether from the privilege accorded to other rate-payers. In comparing the amendment moved by the hon'ble member opposite (MR. BELL) with the section as it stood, he could perceive only one distinction, which was this, that where the members of a joint undivided family should name one of their number as their representative, the Chairman should register the name of such person either as a voter or a person to be elected. Otherwise BABOO KRISTODAS PAL did not see any distinction whatever between the amendment and the section in the Bill. On the contrary he must confess that the amendment as framed by the hon'ble member appeared to him to be incomplete. Suppose the members of a joint family did not agree in nominating one of their number to represent them, was that family to go altogether unrepresented? That he was afraid would be the effect. But the provision in section 9 would meet that difficulty. If the members of a joint family should disagree amongst themselves in nominating a representative, the Chairman could then decide which of the members of that family should be eligible. Now the question was this, whether, when the members of a joint family were unanimous, the Chairman should have a discretion in admitting the representative of that family. The hon'ble mover had explained that it would have followed as a matter of course that the Chairman would accept the nomination of the family. BABOO KRISTODAS PAL

The Hon'ble Sir Stuart Hogg.

thought it was desirable that that principle should be embodied in the Bill. It was, however, open to doubt whether the Chairman, if he did not agree with the choice of the family, would be bound to accept it. He might exercise the discretion vested in him and reject the representative named by the family. It would, BABOO KRISTODAS PAL admitted, be an absurd course when the members of the family had unanimously selected one of their number to represent them, and the Chairman had the power of rejecting their nomination. If therefore section 9 was amended in the spirit of the last portion of the hon'ble member's amendment, namely, that where the members of a joint undivided family or a partnership firm or the joint occupiers of a house, desired to allow one of their number to represent them, then their nomination should be registered by the Chairman; and that where they should disagree, the Chairman should decide, as provided in paragraph 2 of section 9, which of the said members should be eligible,—then the object aimed at would be attained. He entirely agreed with the hon'ble mover that it would not be fair to exclude the representative of a joint family from the privilege of voting or standing as a candidate for election simply because the rates and taxes were paid in the name of a deceased person. In fact he thought that the first part of the amendment, which provided that no application should be made unless by a person in whose name the rates or taxes were paid, would be inoperative, because, as pointed out by the hon'ble mover, many persons in whose names the bills were now made out were dead. But the other clause would cover these joint families; so even if the rates were not paid in the name of a person whose name was registered in the assessment books, still if he was nominated as the representative of the family, he could be brought under registration. Practically, therefore, the first part of the amendment would be inoperative. So taking all these circumstances into consideration, BABOO KRISTODAS PAL would suggest that that part of the amendment be adopted which authorized the Chairman to accept registration where the nomination was unanimous, leaving it to his discretion to select a member where the members of a joint family or partnership, or the joint occupiers of a house, disagreed in the selection of a representative.

The HON'BLE SIR STUART HOGG said, if the hon'ble member would remember, this point had been considered very fully. They all agreed that that was the best course, but the difficulty was how to word the section, as it would become necessary for the Chairman to direct a preliminary enquiry as to who were the members of a joint undivided family. How could he know who they were? Three or four persons might come forward and say, "we are the members of a joint family; we pay so much in rates and taxes, and we desire that the name of so and so be registered." Then the Chairman would enter the name of that person in his list, and afterwards three or four other persons might come forward and say that the persons who had previously come were not the only members of the family, and that they did not approve of the name put forward by the others. Various complications might thus arise, and it was to do away with such complications that the proviso in the section was introduced; and he thought it was best to

allow the Chairman to decide which member of a joint undivided family was eligible. No Chairman would desire to decide except in a manner which would meet with the wishes of the representatives of the family. That was the only object which he had in introducing the proviso. The question was fully discussed on a former occasion, and the only possible solution of the difficulty was to meet it in the way in which the Bill now stood.

The HON'BLE MR. DAMPIER said, would there be any difficulty in assuming that the thing would work itself in a good many cases? He would throw the onus of proof on the person objecting. Let a man come forward and say, "I am the representative of such a joint undivided family; it is agreed amongst us, and so I apply." The name of such person would then be admitted as eligible to vote or stand for election, and would be published in the lists, and then throw on the joint family whose name he had taken the onus of coming forward and objecting. Then if they came forward and objected, —they would not come forward if unnecessary, but if there was a split in the family and it was necessary,—MR. DAMPIER would leave the Chairman power to decide. That seemed to him to get rid of the power in all cases in which there was unanimity, which was a great object.

After some conversation it was agreed that to section 9 be added a proviso to the effect that where the majority of a joint undivided family or of the parties in a firm or of joint occupier, agreed to select one of their number, the Chairman should accept the nomination, but if the majority did not agree, then the Chairman should decide which should be eligible for election.

The HON'BLE BABOO RAMSHUNKER SEN moved the introduction of the following section after Section 29:—

"(29*a*) The Commissioners shall take from every collector of taxes, and every officer or servant of the Corporation whose duty it is as such officer to take, receive, keep, or expend any money or property belonging to the Commissioners, such security for the honest discharge of his duty as they may think proper."

This section was borrowed from the Bengal Municipalities Bill, and he thought it was a proper safeguard to adopt.

The HON'BLE SIR STUART HOGG observed that, according to the proposed section, it would be necessary to take security from the Chairman and the Engineer, and in fact from almost every officer of the Municipality. He thought the section was unnecessary. If the Commissioners desired to take security from any of their officers, they could do so, as in fact the Justices now did from the collector of taxes, who was the only officer from whom it had been considered necessary to take security.

After some conversation the motion was by leave withdrawn.

The HON'BLE BABOO RAMSHUNKER SEN moved the introduction of the following section after Section 118:—

"(118*a*) All officers and servants of the Corporation are prohibited from purchasing any property at any such sale as aforesaid."

This section was intended to guard against abuse of authority by the police or by servants of the Corporation in the purchase of distrained property.

The HON'BLE SIR STUART HOGG had no objection to the section if the words "and all chowkeedars, constables, and other officers of the police" were omitted. The police had nothing to do with these sales, and chowkeedars were not likely to purchase property at them.

The motion, as amended on Sir Stuart Hogg's suggestion, was agreed to.

The HON'BLE BABOO RAMSHUNKER SEN moved the omission of the following words from section 140:—

"and the cost of such inspection shall be payable in advance at such rates as the Commissioners in meeting shall from time to time direct by the person applying for the said connection."

These inspections were, he understood, made by the paid servants of the corporation, and it was quite needless for the rate-payers to pay again for the cost of inspection.

The HON'BLE SIR STUART HOGG said he could not accept the amendment; the clause proposed to be omitted was in the interests of the public. Every one knew that plumbers in this country were very inefficient artificers, and it was proposed for the safety of the public that before a house was connected with the pipes and mains of the Municipality, the owner or occupier should apply to the Commissioners, and the Commissioners should send an officer to inspect, not the property of the Commissioners, but of the person applying; and for such services it seemed proper that the Municipality should be allowed to demand an equitable fee.

The motion was negatived.

The HON'BLE BABOO KRISTODAS PAL was about to move certain resolutions regarding the appointment of the Chairman of the Commissioners, when—

The HON'BLE SIR STUART HOGG rose to order. He wished to ask whether it was in order to move at this stage of the Bill an amendment which was opposed to the principle of the whole Bill; if this amendment were carried, the whole of the Bill from first to last would require to be altered. He wished to ask His Honor the President, as a point of order, whether the motion of which the hon'ble member had given notice could be moved.

The HON'BLE BABOO KRISTODAS PAL said he wished to explain that at the meeting of the Council when the Bill was referred back to the Select Committee for the consideration of the controlling sections, he suggested the expediency of the Committee being permitted to consider other points involving principles connected with the Bill which were objected to in the memorials which had been received. Upon this the President was pleased to remark that all such questions might be discussed when the Council took into consideration the report which would be submitted by the Committee, but that the attention of the Select Committee must be confined to the particular sections that were referred to them. Consequently, BABOO KRISTODAS PAL abstained from raising those questions in Select Committee.

He would also explain why he had not raised this question at the early stages of the Bill. The Bill when introduced was in the main a consolidation measure. It should be remembered that when the Government was to appoint the Justices, it might be consistent for the Government to appoint also the

Chairman. But as the Council had since accepted the elective system, he thought it was fairly a question for consideration as to whether the elected Commissioners should not choose their own Chairman, and whether a Municipal Commissioner should not be appointed to act as the executive officer of the Municipality in the same way as at Bombay, and be confined to executive functions only. He would explain his views fully if he were permitted to move the resolution. He was entirely in the hands of the Council; and if the Council thought he was precluded from raising this question now, he would of course submit to their decision. He would remind the Council that the question involved in his motion was raised in the memorials which had been submitted to the Council; and when he suggested that these points should be considered by the Committee, the Council was pleased to decide that these questions might be discussed afterwards.

The HON'BLE MR. BELL said, as he understood it, the Bill was only provisionally settled, and there was an understanding, when the Bill was referred back to the Select Committee, that any member might afterwards move substantive amendments in Council.

HIS HONOR THE PRESIDENT having ruled that the motion was in order—

The HON'BLE BABOO KRISTODAS PAL moved the following resolutions:—

"At the first meeting of the members of the corporation in each year they shall proceed to elect a Chairman, who shall hold office for a year, and shall be eligible for re-election. The Chairman shall preside over all the meetings of the corporation; and all questions which may come before any meeting of the corporation for decision shall be decided by a majority of the members of the corporation present and voting at such meeting; and in all cases of equality of votes the Chairman shall have a second or casting vote. In case of the absence of the Chairman from any meeting, the members present shall choose one of their number to preside, who shall for that meeting have all the powers of the Chairman elected by the corporation. In case of the death, resignation, or disqualification of the Chairman elected by the corporation, it shall be lawful for the Town Council to convene a meeting of the corporation for the purpose of electing a Chairman for the residue of the term for which the Chairman so dead, resigned, or disqualified was originally elected.

The entire executive power and responsibility for the purposes of this Act shall be vested in one Commissioner, who shall be appointed by the local Government for a term of three years, and shall be eligible for re-appointment: provided that he shall always be removeable from office by the Government for his misconduct, or neglect of or incapacity to perform his duty, and shall be removed from office by the Government on the votes of not less than two-thirds of the Commissioners present at a special general meeting of the corporation.

The said Commissioner shall be styled "Municipal Commissioner for the city of Calcutta." He shall receive such allowances out of the municipal fund to be raised under this Act as shall from time to time be fixed by the Government: provided that these allowances shall not be less than rupees two thousand or more than rupees two thousand five hundred a month. He shall not be permitted to hold any other appointment or to follow any other occupation, and shall devote his whole time and attention to the duties of his office. He shall not be eligible to be a member of the corporation; but he shall have the same right of being present at all meetings of the corporation, and of taking part in the discussions thereat, as any member of the corporation, but he shall not be at liberty to vote upon, or to move any resolution submitted to any such meeting."

He said these sections, which he had copied bodily from the Bombay Municipal Act, were, he conceived, the logical development of the measure which

The Hon'ble Baboo Kristodas Pal.

the Council was about to pass. As he had already explained, when the Bill provided only a Government machinery for the municipal administration of the town, the question as to whether the Government should retain the power of appointing and removing the Chairman, and whether the Chairman should also hold the office of Commissioner of Police, was different from what it now appeared to be. Now that the Council had thought fit to decide that the town should be governed by an elective corporation, partial though it was, he thought it was but proper that fair play should be given to that body, and that its executive administration should not be over-weighted with a Government nominee.

The Select Committee had now recommended certain provisions for the working of the municipality, which the Government had been pleased to accept, in the interest of the town and for the preservation of that influence of the Government over the corporation which it was thought proper it should exercise. Having done that, he did not think it was now necessary that the Government should retain the power of appointing the Chairman of the municipality. The functions of the Chairman of the municipal corporation of Calcutta were two-fold; firstly, deliberative, and secondly, executive. In his capacity as Chairman of the deliberative assembly he presided over the meetings of the corporation, conducted the proceedings, laid the resolutions before the Commissioners, and did exactly what the Hon'ble the President of this Council did. In his executive capacity he was the chief executive officer of the corporation. He carried out the orders which he as Chairman of the municipality embodied in the statute-book of the corporation. Now he appealed to the Council to consider whether the combination of this two-fold function in the same person was consistent with the satisfactory working of the municipality. He was inclined to think that much of the friction of which they had heard so much now and then was due to this duality of functions vested in the Chairman of the Justices. If the Chairman had been an independent officer, and had no connection whatever with the deliberations of the corporation, except in so far that he should provide information and furnish facts, so as to enable the Commissioners to arrive at a sound decision upon matters placed before them, there would not have been that conflict and friction which had sometimes caused considerable dissatisfaction in the town.

When the Bill was considered in Committee of this Council at its sitting held on the 26th February last, the Hon'ble the President was pleased to remark, with reference to the control claimed by the Government over municipal affairs, that the position was analogous in Bombay. His Honor had remarked:—

"But how about Bombay? Now Bombay is at least as large as Calcutta; its population is, I believe, greater than that of Calcutta, and is at least as public-spirited and as well educated, and at least as well suited for self-government."

BABOO KRISTODAS PAL was quite willing to follow the example of Bombay. But how did matters stand in Bombay? He found that in 1872 an Act was passed in Bombay conceding to that town the present system of municipal self-government. That Act provided a body of partly elected and partly

nominated Commissioners, and also a Town Council. The Chairman of that body was elected by the Commissioners. The executive authority and responsibility rested with the Municipal Commissioner who was appointed by the Government. And this system had been in operation for the last three years. He had the evidence of the most competent local authority that it had worked fairly. The gentlemen to whom he referred was himself the Municipal Commissioner of Bombay not many years ago; he was reputed to be the author of the present constitution, and had the best opportunities of observing its practical working; and BABOO KRISTODAS PAL was much obliged to that gentleman for giving him his testimony in favour of the Bombay system, which recognized the distinct responsibility of the Chairman and the Municipal Commissioner in the form BABOO KRISTODAS PAL had proposed in the new sections, that was to say, giving the Commissioners the power of electing their own Chairman annually, and to the Government the power to appoint an executive officer answerable for the executive administration of the town. This system had worked satisfactorily; and if it had worked well in Bombay, why should it not work equally well in Calcutta? He saw no reason whatever why it should not.

It would be presumptous on his part to remind the Council that in those civilized countries where the privilege of the elective franchise was enjoyed, the right of nominating the executive officer who administered the municipality was not claimed by the Government. Of course, the position of India was somewhat peculiar, and the experiment of self-government was also new. But the experience gained in the Presidency of Bombay ought to be a fair guide to us in Calcutta. If the people of Calcutta did not fall short of their brethren in Bombay in intelligence and public spirit, he did not see why the people of Calcutta should be treated in a different manner from those of Bombay.

Then the proposition he had embodied in these sections contemplated another material change. He meant the separation of the offices of Chairman of the Justices and Commissioner of Police. And here he might inform the Council that he was not aware of any civilized city where the chief of the police was the chief of the Municipality. It was not so in civilized Europe as far as he was aware; he believed it was not so in America; and it was not so even in the capitals of Bombay and Madras. If, then, in the sister capitals of Bombay and Madras it had been found quite practicable to carry on the municipal government without uniting the functions of Chairman of the municipal corporation and Commissioner of Police in one person, he saw no reason whatever for centralizing authority in the hands of one executive officer in this town. The practical effect of this centralization was divided responsibility. It could not be contended that the present Chairman of the Justices, with all his energy and devotedness, could perform to his own satisfaction the multifarious duties which devolved upon him; and he believed that those who knew the working of the Police and of the Municipality of Calcutta would agree with him in thinking that practically the administration of the police was left to the Deputy Commissioner, the Chairman of the Justices exercising control only in rare and exceptional cases. If, then,

The Hon'ble Baboo Kristodas Pal.

the Deputy Commissioner of Police was the real responsible officer, by all means centre responsibility in him, but do not divide the responsibility. The duties of Chairman of the Justices were so various and so onerous that they were sufficient to occupy his whole and undivided attention. He was satisfied that with the energy and ability the present Chairman of the Justices possessed, he would have done much more for the town if his mind had been less fettered with the work of various other departments; if indeed he could have given all his leisure and all his time to the performance of his legitimate duties as the head of the municipality.

There was also another question of principle involved in the centralization of this authority in the hands of the same person. He did not mean to make any personal reflections, but it was quite possible that the power the head of the municipality might possess and exercise as the head of the police might be used to the detriment of the liberty of the subject. He might confess that his peculiar notion on the subject was that the head of the health department should not be the head of the thief-catching department. Thus, not only on administrative and on what he might call moral and political grounds was the separation of the functions of the Commissioner of Police and Chairman of the Justices in the highest degree desirable, but also on the ground of economy this reform was much needed. He found that the Chairman of the Justices now drew Rs. 3,500 a month; the Vice-Chairman Rs. 1,200, the maximum salary, the present incumbent drawing Rs. 1,000; the Deputy Commissioner of Police Rs. 1,500, making a total of Rs. 6,200. Suppose we followed the scale of pay prescribed in the Bombay Act, from Rs. 2,000 to Rs 2,500 for the Municipal Commissioner; and he believed that if a good and efficient officer could be found in Bombay at a salary of Rs. 2,500, surely the Bengal Civil Service, which boasted of many able and efficient officers, would not be found wanting in giving us such an officer. Taking then the pay of the Chairman at the Bombay scale, Rs. 2,500, and the pay of the Commissioner of Police at Rs. 3,000, the same which was formerly given to the Commissioner of Police when the office was distinct from that of Chairman of the municipality, the total came to Rs. 5,500. He submitted that if it were decided to have a separate officer as the Municipal Commissioner for the town of Calcutta and a separate officer as Commissioner of Police, it would not be necessary to entertain another subordinate officer under the Municipal Commissioner who now held the position of Vice-Chairman. In Bombay a single Commissioner did everything in the executive department; and if the Municipal Commissioner in Calcutta devoted his whole time to the business of the municipality, it would not be necessary to entertain a separate officer as Vice-Chairman. Then, in the same way, if a single individual were charged with the control and administration of the Police, he did not think it would be necessary to entertain a separate officer as Deputy Commissioner. Practically, as he had already observed, the Police administration of the town was carried on by the Deputy Commissioner of Police; and if a single officer could now perform all that was required of him, surely the Commissioner of Police, under the proposed arrangement, with his powers and duties well defined, would be able to administer the Police without

requiring the assistance of a Deputy. According to this arrangement, then, there would be a saving of Rs. 700 a month, the Municipal Commissioner being paid Rs. 2,500 and the Commissioner of Police Rs. 3,000: the present expenditure was Rs. 6,200, the proposed expenditure would be Rs. 5,500, giving a saving of Rs. 700.

He hoped he had shown that the changes he recommended were not only desirable in the interests of the municipality, but also in the interest of economy. And if the Council was pleased to accept the principles embodied in these resolutions, it would then be necessary to make the required alterations in the different provisions of the Bill. He had not named any section after which this amendment should come, because he was not sure whether they would be accepted by the Council. But he had felt it his duty to lay the propositions before the Council, and hoped they would receive their best consideration. He submitted that when the Government had had the liberality to concede to the town a measure of self-government, it ought to give it fair play; and he did not for a moment believe that if these concessions were made, it would end, as was apprehended in certain quarters, in a *fiasco*. He really believed that what had proved successful in Bombay would, *cæteris paribus*, prove equally successful in Calcutta.

The Hon'ble Mr. Bell said that, as a member of the Select Committee to whom this Bill was referred to consider the control sections, he must express his surprise at the amendment which had just been proposed. The Select Committee were asked to examine the Bill as it stood, and to consider what control ought to be exercised over the new Municipal Commissioners. Now, he thought it was very possible that if provisions like those proposed by the amendment had been in the Bill when it was referred to the Select Committee, the Committee might have framed very different control sections from those which they had submitted to the Council, and which the Council had passed that day. The hon'ble member had spoken a good deal about the Bombay Municipality, and he had asked the Council to adopt the amendment, because the section formed a part of the Bombay Act. But the hon'ble member had omitted to state that the control section so much objected to in Calcutta formed a part of the Bombay Act. Section 58, which the Select Committee had omitted from this Bill, formed a part of the Bombay Municipal Act, and therefore it appeared to him that there was no analogy between the Bombay Municipal Act, which contained those stringent control sections, and this Bill, from which those identical sections had been omitted. Therefore he thought that in that respect the analogy which the hon'ble member had attempted to draw had altogether failed.

Mr. Bell did not propose to enter into an argument on the various points to which the hon'ble member had referred. He thought that if the hon'ble member had wished to introduce an amendment of this sort, it ought to have been brought before the Select Committee. In fact one of the learned Counsels, who had addressed the Select Committee, had pressed upon them these very sections of the Bombay Act, and he was asked by one of the members of the Select Committee whether, if the section now sought to be introduced

The Hon'ble Baboo Kristodas Pal.

were adopted, the objections of his clients to section 58 standing part of the Bill would be removed. And as the learned Counsel was unable to give an answer to the question, the Select Committee did not further consider the matter.

MR. BELL did not wish to follow the hon'ble member through the various topics upon which he had touched; but he could not refrain from observing, in conclusion, that it must be very satisfactory to the hon'ble member, the Chairman of the Justices, to hear the highly eulogistic terms in which he was spoken of by his brother Justices in the municipality; but MR. BELL thought he must find it rather difficult to reconcile those laudatory expressions with the recommendation that invariably followed that his salary should be reduced or his appointment abolished.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble member who had just spoken had referred to the stringent controlling sections of the Bombay Act. They were sections 40 and 41 of that Act. If the Council would refer to those sections they would find that they gave no power whatever to the Bombay Government to *raise* taxes, as the Calcutta Municipal Bill in its last form did. The Bombay Act of course gave the Government power to provide funds out of the revenues of the Municipality for meeting any charges for works prescribed in the Municipal Act, but in which there might be default, and in so far the provisions recommended by the Select Committee were substantially in accord with it. The provisions in the Calcutta Bill distinctly declared what were the particular works which were made compulsory upon the Municipal Commissioners. They must, for instance, provide funds for the payment of interest upon the loans, and make provision for the formation of a sinking fund; they must provide for the payment of the police; they must provide so much a year raised by loan for the drainage works; they must provide funds for the water-supply. And there was a further provision empowering the Government to appoint a Commission of Enquiry, if the Municipal Commissioners had failed in making adequate provision for the cleaning and conservancy of the town. Therefore, as far as the obligations of the Commissioners were concerned, they had been made sufficiently stringent and sufficiently explicit. And in so far he did not see how, because the Government of Bombay had the power to draw funds from the Bank, whereas the Government of Bengal did not claim that power, but simply declared that the Chairman should carry out the orders of the Government whenever default should be made by the Commissioners in respect of the conservancy of the town, and the Chairman would then be the representative and executant of the will of the Government, there would be a material difference in the position of the two municipalities in that respect.

BABOO KRISTODAS PAL had already explained why he had not proposed an amendment at an early stage of the Bill. In fact, every memorial which had been submitted to the Council complained of the power taken by the Government for the appointment of the Chairman, and also of the union of the functions of the Commissioner of Police and Chairman of the Municipality in the same person. He drew the attention of the Council to the prayers of the

several memorials that had been received by the Council, and asked for leave to discuss the matters therein referred to in Select Committee. The Council was pleased to decide otherwise, and he could not therefore raise the question in Select Committee.

As to what the hon'ble member had said with reference to the tribute of respect which BABOO KRISTODAS PAL had thought it his duty to pay to the hon'ble mover of the Bill who occupied the position of Chairman of the Justices, the Council ought to discuss the question irrespective of personal considerations. If the Council decided that it would be for the interest of the town to appoint a Chairman who should not be the Commissioner of Police, and that the pay of the office should be reduced, he was sure that the hon'ble mover would be the first to second the proposition; he hoped that no personal considerations would be allowed to sway the decisions of the Council in matters like this. The Council ought to discuss all questions for the good of the public, and not from a feeling as to how questions might affect the interests of individual officers.

HIS HONOR THE PRESIDENT said:—"Although I am not willing to prolong a very long discussion, I must say that I cannot in the least degree concur in the amendment proposed by the hon'ble member, nor can I agree in any one of the arguments which the hon'ble member has adduced. I listened with great interest and attention to all the arguments which have been advanced by him, but I deem it my duty to say that I cannot concur in any one of them. So far from the present arrangement causing divided responsibility, as the hon'ble member seems to think, it appears to me that it has the clearest possible advantage in uniting combined responsibility. It may be that the Deputy Commissioner of Police exercises a great deal of power over the police, and that the Chairman of the Justices does not interfere very much with them. Nevertheless, he does interfere with them in some respects, and in so far as he does interfere, he interferes beneficially. But if his interference was really so rare and exceptional as the hon'ble member supposes, then what possible objection can there be to uniting the functions of Commissioner of Police and Chairman of the Justices? Either the Chairman does interfere with the management of the police, or he does not; if he does not, then there is no practical harm in having the power; but if he does, I maintain that he does so with advantage.

"The duties of the Chairman may be varied and onerous, as the hon'ble member seems to consider, but I believe they will not be rendered less onerous by his being shorn of his power as Commissioner of Police; and I believe that the possession of this power renders the execution of his duty as Chairman of the Justices much more smooth than it would otherwise be: and so far from his being able to do much more for the town if he were not also Commissioner of Police (as the hon'ble member supposes), my belief is that he would be able to do much less; and that were the functions of the two offices to be divided, the state of the town would not be so good as we now see it. And as to the combined powers being used to the detriment of the poor and the liberty of the people of the town (as stated by the hon'ble member), I

The Hon'ble Baboo Kristodas Pal.

cannot at all believe that to be the case. I do not suppose that the police are always blameless; they may be sometimes in the wrong. But on the whole, I believe that the police powers of the town, as administered by the officer who combines the functions of Chairman of the Justices and Commissioner of Police, are exercised judiciously and considerately towards the people. There may be instances to the contrary, but whenever they occur a prompt remedy is applied. But my impression is that the police administration of the town has been on the whole just and considerate towards the people, and that it is more likely to be so when the two offices are combined in an officer who has so direct an interest in the welfare of the town as the Chairman of the Justices must necessarily have. I desire to put that in the clearest manner as regards the interests of the people, namely, that the Commissioner of Police was more likely to be merciful and considerate when he holds the office of Chairman of the Justices, than if he held the office of Commissioner of Police only. I believe it is the combination of the two offices that greatly improves the practical adaptability of the police administration to the needs and feelings of the people.

As regards the experience of Bombay, I need not remind the Council at this moment that I have a great respect for the example of that presidency town, having so recently quoted its experience from this chair. But there are cases in which this Council may be permitted to judge for itself, and I contend that in this matter we have a better system than that which exists at Bombay. We have what is of the greatest benefit, namely a strong, united, and efficient executive, and I believe the condition of the city and its administration will compare favorably with that of any city in British India; and I do hope that there may be no disturbance of this part of the system, which long experience has shown to work so well."

The Council then divided:—

Ayes—3.	*Noes*—7.
THE HON'BLE NAWAB ASHGAR ALI.	THE HON'BLE BABOO RAMSHUNKER SEN.
" " BABOO KRISTODAS PAL.	" " " JUGGADANUND MOOKERJEE.
" " MR. BROOKES.	" " MR. BELL
	" " " REYNOLDS.
	" " SIR STUART HOGG.
	" " MR. DAMPIER.
	HIS HONOR THE PRESIDENT.

The motion was therefore negatived.

HIS HONOR THE PRESIDENT said—"there is one point I wish to mention, and to leave the decision entirely in the hands of the Council. It has been impressed upon me by the second of the two deputations which came to see me that it would give great satisfaction if, in the elective sections of the Bill, the proportion of Municipal Commissioners to be appointed by the Government should be reduced from one-third to one-fourth. I have just received a letter from the Chairman of the Indian League, which presses upon me the same view as that which was urged by the very large deputation to which I have referred. That deputation comprised many gentlemen of rank, wealth, and

station, besides the members of the Indian League, and they certainly urged this point very much upon my attention. I understand that they attach very great importance to it. I myself do not see it in the same light; I don't think it very much matters whether the proportion of nominated Commissioners is one-third or one-fourth, so far as the Government is concerned; it is not a point on which the Government is particularly interested. Certainly the Government has no desire to obtain the power of appointing members who would be, as it were, Government nominees. That is not the object with which the section has been introduced. The object of the Council in introducing that section is this, that in the event of the elections not sufficiently representing certain sections of the community, particularly the Mahomedan section of the community and the European section, the Government should have the power of redressing the balance. It was for the purpose of this redressing of the balance that the proportion of one-third was taken. I am myself so far sanguine that the elections will on the whole nearly represent the different sections of the community, that I am quite willing to reduce the proportion from one-third to one-fourth, if that shall be the pleasure of the Council. I think it is a concession that may be safely made. Then, on the other hand, I confess I do not attach to it the same importance which the deputation attached to it, and which I understand they still do attach to it. So, considering that it is important to make all such concessions to any important section of the rate-payers as can safely be made, I would desire to say that I for one am prepared to yield that particular point if it shall be the pleasure of the Council. If, however, the Council think otherwise, then I am quite prepared to stand by the first decision referred to. If, on the other hand, the Council are prepared to make this concession which I for one am willing to make, I think the Government will be prepared to accept it. I would not desire to press the point upon the attention of the Council, but would leave entirely to their consideration the concession asked for by this section of the rate-payers. We have had so much discussion upon the point, and the matter is so clear to the mind of every member present, that I would desire to submit the question now for their consideration, and I would ask the Council to be good enough to decide the point one way or the other at the present sitting."

The HON'BLE MR. BELL said he thought it would be dangerous to reduce the proportion of nominated Commissioners, if there was to be no restriction as to the proportion of Commissioners of different nationalities that were to be elected. He thought the proportion of Commissioners to be nominated by the Government should not be reduced, while there were such important minorities that were likely to be unrepresented, as it would enable the Government to redress the balance where it might be necessary to do so.

HIS HONOR THE PRESIDENT said it seemed to him that all the rate-payers, including the members of the deputation with whom he had conversed, who were in favor of reducing the proportion of nominated Commissioners, held this opinion, namely, that the Commissioners appointed by the Government would in the main vote on the side which they thought the Government approved. That was their apprehension. He himself, as the Council knew, did not share

His Honor the President.

that opinion. On the contrary, he might say from past experience that the gentlemen who were nominated by the Government did not always vote with the Government. He did not at all believe that the Commissioners appointed by the Government would vote with the Government. But still there appeared to be in the public mind amongst the native community some apprehension to the contrary, and he was afraid that somehow or other they would not rid themselves of the fear that the Commissioners appointed by the Government would, as a rule, vote on the side of Government. He thought it was important, if the Council reasonably could, to allay these apprehensions. Certainly nothing was farther from the intention of the Government than that any such apprehension should be realized; therefore, the reduction of the proportion of nominated Commissioners would on the whole give confidence to a certain section of the rate-payers, the section who were most in favor of the elective system.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he did not think it would be advisable to alter the provisions of the Bill in this respect, and for this reason, that the elective system was an experiment. Some such change might perhaps hereafter be made if the system were found to work well; but when the Council started with a measure which had not been tried, he did not think it would be quite consistent with the position the Municipality held to the Government to reduce the proposed number of nominated Commissioners from one-third to one-fourth of the whole number. But supposing the Council were of opinion that the number might be reduced, then he would propose for the consideration of the Council that it should be provided that the number of Commissioners to be appointed by the Government should be not more than one-third; that would leave a discretion to the Government to appoint any number not being more than one-third of the whole number.

The HON'BLE NAWAB SYED ASHGAR ALI and the HON'BLE BABOO RAMSHUNKER SEN expressed themselves in favor of the proportion of one-third.

The HON'BLE MR. DAMPIER observed that the proposition made by the hon'ble member on his right (Baboo Juggadanund Mookerjee) might perhaps be improved by providing that the number of nominated Commissioners should be not more than one-third and not less than one-fourth. The Lieutenant-Governor would then be in a position to fix the number according to what he considered the necessities of the case. The position of the matter seemed to be this. The Council seemed to think that one-third was the smallest number that could safely be fixed for this experiment, but the executive Government took a more liberal view, and was inclined to try with a less number. The Council thought it dangerous to do so, but they did not wish to refuse the Government its wish of making the more liberal attempt. They did not wish to say to the Government "you shall not be more liberal than we are."

The HON'BLE SIR STUART HOGG considered the suggestion impracticable; it would necessitate an entire reconstruction of the constitution clauses of the Bill.

The HON'BLE BABOO KRISTODAS PAL said that as he was in favor of the lesser proportion, and had suggested the proportion of one-fourth when the question was proposed in the first instance, he would, to bring the matter to an issue, move that in section 6, line 1, the number "eighteen" be substituted for "twenty-four," and that in section 7, line 1, the word "fifty-four" be substituted for "forty-eight."

The HON'BLE MR. BROOKES said he was in favor of the proportion of one-third. When one-fourth was suggested, the Bill provided for the election of Commissioners of the different nationalities in certain proportions, and it was his suggestion that under those circumstances the Government should have power to nominate eighteen Commissioners, so that the Government might have power to balance the nationalities if the elected Commissioners should consist entirely or almost entirely of Hindoos. He thought it very wise that the Government should have such power, and he should therefore support the proportion of one-third and vote against reducing it to one-fourth.

The HON'BLE MR. REYNOLDS said he thought the proportion of one-fourth nominated Commissioners was sufficient, but the opinion of the majority of the Council seemed to be the other way.

HIS HONOR THE PRESIDENT thought that those rate-payers who were anxious that the proportion of one-third should be substituted for one-fourth, would see that the question had been fully put before the Council and had been exactly considered, and that the sense of the Council was decidedly against it; there seemed to be no doubt of that being the opinion of the Council. He himself did not attach to it that importance which the members of the deputation to which he had referred seemed to attach to it; and being quite certain in his own mind that the fear they entertained would not be realized, at least in his time, he should not very much care, as far as he was personally concerned, which way the question was decided; for he should certainly not appoint members to the municipal commission with the view of their voting with the Government. The Government had no interest in the matter except that the policy of improvement should continue.

The Council then divided:—

Ayes—2.	*Noes*—7.
THE HON'BLE BABOO KRISTODAS PAL.	THE HON'BLE NAWAB SYED ASHGUR ALI.
" " MR. REYNOLDS.	" " MR. BROOKES.
	" " BABOO RAMSHUNKER SEN.
	" " " JUGGADANUND MOOKERJEE.
	" " MR. BELL.
	" " SIR STUART HOGG.
	" " MR. DAMPIER.

The motion was therefore negatived.

The Bill was then directed to be published in the next Gazette with the view of being passed on Saturday, the 25th instant.

The Council was adjourned to Monday, the 20th instant, at 11 A.M.

Monday, the 20th March 1876.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding*,
The Hon'ble H. L. Dampier,
The Hon'ble Sir Stuart Hogg, kt.,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Juggadanund Mookerjee, Rai Bahadoor,
The Hon'ble Baboo Ramshunker Sen, Rai Bahadoor,
and
The Hon'ble Baboo Kristodas Pal.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Dampier moved that the Bill to amend and consolidate the law relating to municipalities be further considered in order to the settlement of its clauses.

The Hon'ble Mr. Dampier moved the substitution of the words "two hundred" for "fifty" in the proviso which was added as an amendment to section 49. He had received a letter from the Chairman of the Suburban Municipality objecting to that proviso, and pointing out that the limit fixed by the amendment was too low, and would apply to almost every servant of the municipality except menial servants. Mr. Wilson said the principle upon which the limit was fixed was that, Rs. 200 being accepted for Calcutta, Rs. 50 would be suitable for mofussil municipalities. But that analogy did not apply to the suburbs of Calcutta and Howrah, where the salary of officers of the description to which the provision was intended to apply would be considerably higher. He hoped that, after seeing the effect of the amendment as adopted at the former meeting, the Council would allow him to add an exception in favor of the municipalities of the Suburbs and Howrah by raising the proposed limit to Rs. 200.

The Hon'ble Sir Stuart Hogg said he entirely concurred in the opinion of the Chairman of the Municipal Commissioners of the Suburbs: it was on those grounds that he opposed the amendment which was moved on a previous occasion.

The Hon'ble Baboo Kristodas Pal said, with every deference to the Chairman of the Suburban Commissioners, he submitted that the officers of that municipality who received a salary of more than Rs. 200 a month might be counted on one's fingers. In fact he doubted whether they had more than two officers who received a salary of more than Rs. 200; and the same remarks would apply to the Howrah municipality. The limit of Rs. 200 was fair and reasonable for Calcutta, because here there was a large number of officers in the receipt of a salary exceeding Rs. 200. On that ground he submitted that the limit in mofussil municipalities should be Rs. 50; but if that minimum were considered too low for the Suburbs and Howrah, he was willing to raise it to

Rs. 100. But the limit of Rs. 200 would exclude all officers under the Vice-Chairman of those municipalities, and the proviso adopted by the Council would practically become a dead letter. When the Council adopted that proviso, it assented to the principle involved in it, and he had seen nothing adduced which would make him change his opinion as regards the principle of the provision.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said he did not see why an exception should be made in favour of the Suburbs and Howrah. There was another important municipality (Dacca) the income of which might not be so great as that of the other two, but which was in every respect as important. And with respect to the number of servants of municipalities who drew a salary of more than Rs. 200, in the Suburban Municipality there were not more than two now, and at Howrah there was only one, viz. the Secretary. Therefore, in point of fact, the Council was going to make an exception in favour of these two municipalities for the sake of two or three individuals, and he considered that the provision should remain as it now stood.

The HON'BLE SIR STUART HOGG said that the proviso in the Bill was highly objectionable, as it struck at the independence of the executive. He considered it most inexpedient to empower the Commissioners at a meeting to appoint the subordinate officers of the municipality, as they might have persons connected with them whom they might desire to serve quite independently of their fitness for the offices to which they were to be appointed. The executive officers were responsible for the efficient discharge of the duties of municipalities, and he considered that the appointment of the subordinate officers should be left in the hands of those who were practically responsible.

HIS HONOR THE PRESIDENT felt it his duty to say that the appointment of particular individuals to particular offices was not one of those functions which ought to be vested in a body of gentlemen at a meeting. Experience very clearly showed that it was not desirable to confer such a power in a corporate body. His remarks more particularly applied to appointments which were sure to cause a certain sort of agitation. But he had no objection to impose a check on the dismissal of officers above a certain standing. He would suggest that the check of the Commissioners in meeting should apply to dismissals only, and if that were accepted, the present limit of Rs. 50 might be retained. He submitted to the Council that they ought not at one meeting to reverse the decision of a previous meeting without very good grounds, especially as there were one or two members absent at the present meeting who were present on the previous occasion. But if the hon'ble member on whose motion the provision was carried, would consent to its being amended in the way in which HIS HONOR suggested, it might perhaps be done.

After some conversation, it was ultimately agreed that in lieu of the proviso at the end of the section, a proviso to the following effect be substituted:—

"Provided that no officer shall be appointed to an office the salary of which is more than Rs. 200 per mensem, without the sanction of the Commissioners at a meeting, subject to the approval of the Commissioner of the division; and provided also that no officer whose salary is more than Rs. 50 per mensem, shall be dismissed without the sanction of the Commissioners at a meeting."

The Hon'ble Baboo Kristodas Pal.

On the motion of the HON'BLE MR. DAMPIER the word "assessors" was inserted before the word "overseers" in line 5 of the same section.

Verbal amendments were, on the motion of MR. DAMPIER, made in sections 70 and 75

The HON'BLE MR. DAMPIER said, as the Bill stood it provided that the tax was due on the first day of the first month of the quarter; but it was also provided by section 109 that no bill should be presented until one month had elapsed from the time when the tax became due. This would throw the whole collection of the tax into arrears; and he would therefore move that the words "and not less than one month" in lines 1 and 2 of that section be omitted; and that in the second clause, for the words "appended to such bill shall be a notice of demand in the form marked (A) in the second schedule" the following words be substituted :—

"If the amount in such bill be not paid on presentation thereof, a notice of demand in the form marked (A) in the second schedule may be served on the person liable to pay the same, and such notice of demand may be served either at the time when the bill is presented, or at any subsequent time, provided that no charge shall be made in respect of the service of such notice."

The HON'BLE BABOO KRISTODAS PAL said, if a person was not able to pay the tax immediately on presentation of the bill, he was to be served with a notice of demand. The practice in Calcutta was that a bill was presented two or three times before it was paid; then, if the tax-payer could not pay the tax, a notice of demand was served upon him. If that was the practice in Calcutta, it could not be said that persons in the mofussil were in a position to pay the bill at once, that was to say, the moment it was presented. He thought that if the bill was not paid within a reasonable time after presentation, then a notice of demand might be served. But as the two amendments were worded, he did not know whether such a practice would be allowed.

The HON'BLE SIR STUART HOGG said that under this Bill the presentation of the bill and the service of the notice of demand were to be made simultaneously: the two processes ought, he thought, to be separate. If the bill was not paid within a reasonable time, then a notice of demand should be served.

The HON'BLE MR. DAMPIER said he would explain the effect of the second amendment. The practice was no doubt very much what the hon'ble member opposite (Baboo Kristodas Pal) had said. But it had struck him that the bill and notice of demand might be presented at the same time; that was to say, if the bill was not paid on presentation, notice of demand should be served at once, in which notice it would be stated that the tax-payer was required either to pay the amount of the bill within fifteen days, or if this was the first time he was assessed, or if he was assessed at a higher rate than before, he might come in and make his objections instead of paying. Since then MR. DAMPIER had been in communication with persons who were practically acquainted with the matter, and it had been pointed out that there would be a good deal of trouble in filling up all these notices of demand; therefore he proposed that the notice of demand should either be left at the time with the man who did not

pay his bill, or it might be served upon him at any future time, provided that no charge should be made for such service.

After some conversation, MR. DAMPIER'S first amendment was agreed to, and the second was carried with the substitution of the word "shall" for "may" in the 4th line, and the omission of the words "either at the time when the bill is presented or."

On the motion of MR. DAMPIER a verbal amendment was made in section 110, and the position of sections 124 and 125 was transposed.

The HON'BLE MR. DAMPIER moved the substitution of the following section for section 146:—

"The Commissioners at a meeting, with the sanction of the Lieutenant-Governor, may establish a toll-bar and levy tolls on any bridge, or on any part of a road, which they may have constructed after the commencement of this Act, or at any place within the municipality adjacent to such bridge or part of a road, at which tolls may conveniently be levied on vehicles and animals passing over such bridge or part of a road, and the profits derived therefrom shall be carried to the credit of the municipal fund.

Provided that no such toll-bar shall be established or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge or part of a road, and in maintaining the said bridge or part of a road in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided."

He said it was quite out of the question to abolish tolls on roads where they at present existed; one municipality got as much as 25 per cent. of their income from this source, and several got a very considerable sum. The Council had heard a great deal about the unfairness and injustice of this tax; of people being required to pay twice for the use of the roads, first in the shape of a municipal tax, and then in the shape of a toll. Here was the reverse of the medal. The municipality of the Suburbs had no toll-bars, and they complained very much of the whole of the traffic of Calcutta coming over their roads, and not contributing one pice to their funds. The proposed section would enable them and other municipalities to levy tolls on any bridge or road, or part of a road, which they might have constructed, and for the maintenance of the bridge or road for five years after its construction: as soon as the cost of construction and of such maintenance had been recovered, the tolls would cease.

The HON'BLE SIR STUART HOGG inquired whether there would be any strong objection to exempting *kutcha* roads from liability to tolls. He thought it would be a great hardship to levy tolls on such roads, as during the rains one might often see carts buried up to the nave, and it would not be fair to levy tolls where during certain seasons traffic was almost entirely impoded.

The HON'BLE MR. DAMPIER explained that tolls were imposed on the authority of the Government; and under the Bill as it now stood the Government might make over to a municipality any tolls which were levied under the authority of Government at toll-bars established within the municipality. The municipality could not establish any toll-bar without the sanction of the Lieutenant-Governor. The proposed section would not empower a municipality to set up any toll-bar except for works constructed by them, and then only until

the cost of construction and of maintenance for a certain period had been recouped. And with regard to the special objection urged by the hon'ble member, to putting a toll-bar on a *kutcha* road, MR. DAMPIER would instance the case of a bridge connecting two portions of a *kutcha* road. The bridge might be a very great convenience. He had, however, no particular objection to inserting the word "metalled" before "roads," and would adopt the hon'ble member's suggestion.

The HON'BLE BABOO KRISTODAS PAL said he understood that the object of the Bill was simply to consolidate existing Acts and not to impose additional taxation; and when the discussion on this subject took place at a previous sitting, the hon'ble mover pointed out that tolls existed in several municipalities, and that it would not be wise to deprive such municipalities of the income they derived from that source. The hon'ble member also stated that it was not the object of the Government to allow additional taxation to be imposed. But the effect of the amendment now before the Council was to impose additional taxation; for instead of confining himself to securing the income now derived from this source, he proposed to give to municipalities where tolls were not now levied a power which they did not now possess. That was inconsistent with the avowed object of the Bill.

He was aware that tolls under the proposed section could not be imposed without the sanction of the Lieutenant-Governor, but practically the effect of the provision, when sanctioned, would be the imposition of additional taxation.

He entirely agreed with the hon'ble member on his right (Sir Stuart Hogg) that tolls should not be levied on roads which were not metalled. He had heard stories of the sufferings of the people who had been made to pay tolls on roads which were unmetalled, and over which carts could not pass without great difficulty during the rains. The objection which he took to the proposal for levying tolls on roads generally had not been invalidated by any arguments which had been brought forward. The only question left open for consideration was whether the income now derived by municipalities from this source could be abandoned. It appeared from enquiry that the existing revenue could not be surrendered without seriously crippling the resources of some municipalities. He was willing to accept that position. He therefore proposed that the levy of tolls should be continued in those municipalities only where it existed, but that no power to levy tolls on roads should be conferred on any municipality which did not now obtain an income from that source.

The HON'BLE MR. DAMPIER observed that it was altogether straining words to say that this section provided means for additional taxation.

After some conversation the Council divided:

Ayes 5	*Noes* 2.
The HON'BLE BABOO RAMSHUNKER SEN.	The HON'BLE BABOO KRISTODAS PAL.
" MR. BELL.	" " JUGGADANUND MOOKERJEE.
" MR. REYNOLDS.	
" SIR STUART HOGG.	
" MR. DAMPIER.	

The motion was then carried, with the addition of the word "metalled" before the word "roads" wherever it occurred.

A similar amendment was made in section 147; and the following section was introduced after section 147:—

"Whenever a toll-bar shall have been established, and tolls shall be levied as provided in section 146, the Commissioners shall at the end of each year publish, by causing it to be posted up at their office, an abstract account showing—

(1) the amount of expenses incurred in the construction of such bridge or part of a road, and in the maintenance of the same during the five years next after the construction of the same;

(2) the amount of interest which has accrued due thereon, at the annual rate of six per centum annually; and

(3) the amount which has been recovered from the profits of the said toll-bars;

and whenever such expenses and interest shall have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied on such bridge or part of a road."

An amendment rendered necessary by the foregoing amendment was made in section 77.

The Hon'ble Mr. Dampier said, the hon'ble member opposite (Baboo Kristodas Pal) had at a former meeting proposed an amendment to the effect that if the Chairman required any person to do any particular thing, such person might, instead of doing such thing, state his objections to the Commissioners at a meeting; in fact, giving a kind of power of revision to them. To give effect to that proposal, it was necessary to make a verbal amendment in section 174, and to introduce the following new sections after section 174:—

174A. "Any person who is required by a requisition as aforesaid to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against being required to comply with such requisition; provided such objection be preferred within five days of the service of the notice or posting up of the notification containing the requisition; or if the time within which he is required to comply with the requisition be less than five days, then provided that such objection is preferred within such less time.

174B Except as provided in the next following section, such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

174C. If the objector shall allege that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and determined by the Commissioners at a meeting, unless the Chairman or Vice-Chairman shall certify his opinion that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman.

Provided that in any case in which the Chairman or Vice-Chairman shall have certified his opinion as aforesaid, and the objection shall in consequence thereof have been heard and decided by the Chairman or Vice-Chairman, it shall be lawful for the person making the objection, if the requisition made upon him is not withdrawn on the hearing of his objection, to pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or the thing required; whereupon such person shall be relieved of all further liability and obligation in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

174D. The Chairman or Vice-Chairman, or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which they may deem necessary, record an order withdrawing, modifying, or making absolute the requisition against

which the objection is preferred; and unless such order withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

174E. If the person making such objection be present at the office of the Commissioners, the said order shall be explained to him orally, and such explanation shall be deemed to be sufficient notice of the order made; and if such order cannot be so verbally explained, notice of such order shall be given to the person making the objection in the manner provided by section 350; and such explanation of or service of the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required."

The HON'BLE BABOO KRISTODAS PAL said when he proposed the amendment to which the hon'ble mover had adverted, he considered that the question at issue was not simply one of amount, but of principle. First, it was necessary to consider whether a person residing in a municipality should be required to execute a certain class of works without being allowed an opportunity of stating his objections; and secondly, whether the Chairman or Vice-Chairman should be empowered to compel a person to execute such works irrespectively of the value of the work. In the amendment proposed provision was made as to amount only, *i.e.*, if the amount of the work required to be done exceeded Rs. 300, then the person required to execute the work might apply to the Commissioners at a meeting for the revision of the order of the Chairman, unless the Chairman undertook to carry out the work for Rs. 300, or unless he modified his own order. If the Chairman had to carry out the work with his own funds, BABOO KRISTODAS PAL could understand the principle upon which it was based. But as the proposed sections stood, if the Chairman exceeded the estimate, the loss would fall upon the municipality.

In the next place he thought that the most important question was about the classes of works to be done. The removal of nuisances and rubbish, and matters of that kind, did not come within the category of the works to which he referred, because those works were ordinary works, and ought to be done at once. But there were other works, such as the filling up of tanks, with regard to which an appeal should be allowed. He mentioned the other day the case of certain tanks in Calcutta in regard to which the Chairman and Health Officer differed in opinion. The Health Officer considered it necessary to have them filled up; the Chairman and the Engineer on the other hand were of opinion that such tanks were to be found all over the town, and if it was necessary to fill up these tanks, it would be equally necessary to fill up all the others. A case of that kind might occur. The Chairman might order a particular work to be done, and it might be open to question whether it was necessary to execute the work irrespectively of the cost; and the person required to do it should have an opportunity of laying his objections before the Commissioners at a meeting.

With regard to the limit of cost of these works, BABOO KRISTODAS PAL would suggest that it should be lowered to Rs. 100, because in the mofussil extensive works were rare, and the sum of Rs. 100 was heavy enough for people in the circumstances of mofussil residents.

After some conversation the motion was agreed to.

In section 184, line 6, the words "and rubbish" were, on the motion of the HON'BLE MR. DAMPIER, omitted.

On the motion of the HON'BLE MR. DAMPIER, the following proviso was added to section 188:—

"Provided that if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation."

In section 195 the following proviso was introduced on the motion of the HON'BLE MR. DAMPIER:—

"Provided that if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation."

Verbal amendments were made in sections 199 and 213.

Section 213 empowered the Commissioners to enter upon possession of a house which they might have repaired.

The HON'BLE BABOO KRISTODAS PAL said the consideration of this section had been reserved at the last meeting. He had since considered the point, and had no objection to the principle as far as the repairs of unoccupied houses was concerned, but he objected to the mode of recovery of the cost of such repairs: he would affirm the principle of the section, and give power to recover the cost in the same manner as was provided for the recovery of other expenses under the Bill. But he objected to the special procedure provided for the recovery of expenses under this section, and would therefore move its omission.

The HON'BLE MR. DAMPIER said there was no express provision in the Bill authorizing the Commissioners to repair ruinous houses. But there were two sections, one of which provided that if a house was in a dangerous or ruinous condition, the Commissioners might require the owner either to pull it down or to repair it; and there was the general section 174, which declared that if the Commissioners required a person to do anything, and he failed to do it, the Commissioners might do it and charge the expense to the owner. Then this section provided that when there was a ruinous house, and in consequence of the absence or inability of the proprietor the Commissioners repaired it, they might retain possession of the house until the expense of repairs was recovered. He thought it was better to provide this special procedure for the recovery of such expenses than that the Commissioners should be forced to pull the house down.

After some conversation the motion for the omission of section 213 was negatived.

Sections 217 and 218 were agreed to.

Section 219 authorized the Commissioners to maintain an establishment for the removal of offensive matter or rubbish.

The HON'BLE MR. DAMPIER said that there was a notice of amendment in the name of the hon'ble member opposite (Baboo Kristodas Pal) to insert the

words "on the application or with the consent of the occupiers" in clause 2, line 2, after the word "time," so that occupiers should not be bound to avail themselves of the establishment of the Commissioners to remove offensive matter and rubbish from their premises, but might do it through their own servants or anybody else. The hon'ble member did not wish the provision to be made compulsory, but optional. It seemed to MR. DAMPIER that this might be accepted, if after clause 2 were added the words "nothing in this section shall be deemed to restrict the powers which the Commissioners are authorized to exercise under section 184."

The HON'BLE BABOO JUGGADANUND MOOKERJEE observed that the word "rubbish" included broken bricks and mortar, and he thought this section ought not to apply to such things.

After some conversation the further consideration of the section was postponed.

Section 220 required mehters to give one month's notice before leaving service.

The HON'BLE BABOO KRISTODAS PAL moved the substitution of the words "a fine not exceeding Rs. 20" for the words "rigorous imprisonment for a term not exceeding three months" in paragraph 2, line 4 of section 220. He did not believe that there was any law in the country which provided rigorous imprisonment for withdrawal from service without giving notice. The class of people to which the section referred was a very useful one, and they did a service which could not be rendered by other people, and he did not think it would be fair or just to visit desertion by rigorous imprisonment. They ought to be liable to the same punishment that other menial servants were subject to; and if the law considered the punishment of fine sufficient for other servants, he did not see why a more severe punishment should be meted out to this very useful class of servants.

The HON'BLE MR. DAMPIER observed that the hon'ble member seemed entirely to miss the point of this provision. He did not seem to consider how terrible would be the result of a strike amongst these people, and how much the comfort and health of the community would be jeopardized by a combination among them to strike work; it was therefore absolutely necessary, for the protection of health and even life, to make desertion by these men a criminal offence. MR. DAMPIER would, however, be willing to reduce the punishment to one month's rigorous imprisonment.

After some conversation the Hon'ble Mr. Dampier's amendment was agreed to.

In section 221 an amendment moved by the Hon'ble Mr. Dampier on behalf of the Hon'ble Nawab Syed Ashgur Ali, with the object of increasing the time allowed for the repair of drains, &c., from fifteen days to one month, was negatived; and so also was an amendment moved in section 222 for the purpose of exempting from punishment a person who "permits his servants to throw or put" rubbish, &c., into sewers.

Section 222 was then passed after a verbal amendment made on the motion of the Hon'ble Mr. Dampier.

An amendment in section 223, moved by the Hon'ble Mr. Dampier, on behalf of the Hon'ble Nawab Syed Ashgar Ali, for increasing the time allowed for enclosing privies from fifteen days to one month, was negatived.

Sections 224 and 225 were agreed to.

In section 226 the penalty for altering or making unauthorized drains leading into public sewers was, on the motion of the Hon'ble Baboo Kristodas Pal, reduced from Rs. 200 to Rs. 50.

Sections 227, 228, and 229 related to the drainage of land or of a group or block of houses.

The Hon'ble Baboo Kristodas Pal moved the omission of these sections, which were taken from the Calcutta Municipal Bill. He observed that there was no underground drainage going on in mofussil municipalities, and he did not think that these provisions should apply to such places. The amendment to be proposed by the hon'ble mover would, to a certain extent, meet the objects sought to be attained; but he did not understand whether the outlet was to be maintained by the Commissioners or by private individuals.

The Hon'ble Mr. Dampier moved the substitution, for section 227, of the following, which he thought would meet the objections of the hon'ble member:—

"If any land, being within one hundred feet of a sewer, drain, or other outlet into which such land may, in the opinion of the Commissioners, be drained, is not drained to the satisfaction of the Commissioners, the Commissioners may require the owner within one month to drain the said land into such sewer, drain, or outlet, and the Commissioners shall, at their own expense, provide any land which may be required for such drainage, and shall pay any compensation which it may be necessary to pay to any person other than the person whose land is so drained in consequence of such drainage."

The Hon'ble Sir Stuart Hogg suggested that the section should stop at the word "outlet," so as to avoid possible complications as to compensation; if the Commissioners required a person to drain land, they must indicate the way in which it should be done.

After some conversation the Hon'ble Sir Stuart Hogg's suggestion was adopted, and the section as amended was agreed to.

An amendment rendered necessary by the previous amendment was, on the motion of the Hon'ble Mr. Dampier, made in section 228.

Sections 229 to 233 were agreed to.

Section 234 empowered the Commissioners to prohibit excavations.

The Hon'ble Mr. Dampier moved amendments which made the section run thus:—

"The Commissioners at a meeting may by a general order prohibit the making of excavations for the purpose of taking earth therefrom or for the purpose of storing rubbish or filth therein, and the digging of cesspools, tanks, or pits, without special permission previously obtained from them.

If any such excavation, cesspool, tank, or pit is made after the issue and publication of such order without special permission, the Commissioners may require the owners and occupiers of the land on which such cesspool, tank, or pit is made, within eight days, to fill up such cesspool, tank, or pit."

The Hon'ble Baboo Kristodas Pal said he could not accept the amendment, and was rather surprised that the hon'ble mover, with his knowledge of

the condition of the country, should seriously propose this section. It would practically prohibit the erection of any building with earth or bricks. He did not see why such a provision should find a place in the Bill; for if any person committed a nuisance by filling up a hole with refuse, he would be punishable under the general provisions of the law. To make the declaration under comment was simply to interfere with the commonest rights of the people: it was microscopic legislation, and would interfere with the daily wants of the people. The sanitary objects contemplated would be sufficiently met by the sanitary regulations of the law, and when such was the case, he would entreat his hon'ble friend to omit this and the following sections.

The HON'BLE SIR STUART HOGG hardly thought this section should be passed. They were not proposing to deal with a town like Calcutta, but with municipalities and municipal unions in which several places at considerable distances would be grouped together, and therefore the whole intervening space between such places would be included; consequently the villagers would not be able to dig a tank or even a hole without permission.

The HON'BLE MR. DAMPIER observed that it should be remembered that this was one of the provisions which could only be introduced into a municipality by the Government on the recommendation of the Commissioners at a meeting: he would, however, have no objection to modify the provision by empowering the Commissioners to restrict the operation of the section to particular portions of the municipality.

The HON'BLE MR. BELL said he thought it was absolutely necessary that some provision of this sort should exist in the law. Every one who had had experience of mofussil municipalities must know that these tanks and holes in towns were the greatest source of disease: they were receptacles of the most filthy water and decayed vegetation, and any one who had experience of these municipalities would agree that these tanks and holes were a constant source of sickness. He thought that the sections as proposed were necessary, and that with the alteration suggested they were absolutely harmless.

After some further conversation, the Council divided:—

Ayes 5.	*Noes 3.*
The HON'BLE BABOO KRISTODAS PAL.	The HON'BLE BABOO KRISTODAS PAL.
" MR. BELL.	" BABOO JUGGADANUND MOOKERJEE.
" MR. REYNOLDS.	" SIR STUART HOGG.
" MR. DAMPIER.	
" THE PRESIDENT.	

The motion was therefore carried, and the section as amended was agreed to.

Amendments to correspond with those in section 234 were, on the motion of the Hon'ble Mr. Dampier, made in section 235.

Section 236 related to the removal of existing projections from houses.

On the motion of the Hon'ble Mr. Dampier amendments were carried to make it necessary that a hearing should be given before an order was carried out for the removal of an existing projection.

Sections 237 to 241 were agreed to.

Sections 242 to 245 provided regulations similar to those in the Calcutta Municipal Bill to be observed in the building of new houses in municipalities.

The HON'BLE BABOO KRISTODAS PAL moved the omission of these sections. He thought the time had not arrived to insist upon the observance of these building regulations in the mofussil: in Calcutta they were necessary because there was a system of underground drainage, and proper levels must be observed. In mofussil municipalities there was no prospect of an underground drainage; and even in the Suburbs of Calcutta that system was not contemplated, as far as he was aware. To require the inhabitants of mofussil municipalities to furnish plans and the like, would necessitate a large amount of expenditure which would be hard upon the poorer classes. Many of the conservancy and sanitary regulations of this Bill had been introduced chiefly with the view, as far as he understood it, of meeting the wants of two first class municipalities, Howrah and the Suburbs of Calcutta. He was of opinion that it would have been better had these two municipalities been separately dealt with. These sections, even if introduced into first class municipalities, would subject the inhabitants to great harassment, irritation, and annoyance; and even in the Suburbs of Calcutta and Howrah they ought to be very sparingly used, if at all. The object of the Bill was not to cause irritation and annoyance; and as in the absence of underground drainage there was no necessity to have such regulations, he thought it would not be detrimental to the interests of any municipality to omit these sections; in fact, to attempt to foist all the provisions of the Calcutta Municipal Bill on mofussil municipalities would be to put on very high pressure indeed.

The HON'BLE SIR STUART HOGG said the object of these sections was to take time by the forelock, so as to render conservancy arrangements possible. In Calcutta time was not taken by the forelock, and now the difficulty was how to make adequate provision for conservancy. It was for that reason that these sections were introduced.

After some further conversation the motion was negatived, and the sections were agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "and at such a level as will admit of such drainage, and with a plinth of at least two feet above the level of the nearest street" at the end of section 246.

The motion was negatived, and the section was agreed to.

Section 247 was agreed to.

In section 248, the penalty for erecting a hut contrary to the provisions of section 246 was, on the motion of the Hon'ble Baboo Kristodas Pal, reduced from Rs. 100 to Rs. 20.

The further consideration of the Bill was postponed.

The Council was adjourned to Thursday, the 23rd instant.

Thursday, the 23rd March 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYUD ASHGAR ALI DILER JUNG, C.S.I.

MOFUSSIL MUNICIPALITIES.

THE HON'BLE MR. DAMPIER moved that the Bill to amend and consolidate the law relating to municipalities be further considered in order to the settlement of its clauses.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER the following section was introduced after section 158:—

"158A. The Lieutenant-Governor may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order; provided that reasonable compensation shall be paid by the Commissioners to any farmer or other person who has entered into a legal contract with the said Commissioners for the collection of such tolls, and whose profits under such contract are diminished by an order of the Lieutenant-Governor passed under this section."

The HON'BLE MR. DAMPIER said that section 184 now related to the removal of offensive matter only, and was applicable to all municipalities on the passing of the Bill. He suggested that "rubbish" should be dealt with in two separate sections as follows:—

"184A. The Commissioners at a meeting may from time to time, by an order published as prescribed in section 348, appoint the hours within which only every occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the establishment of the Commissioners, and the Commissioners may charge such fees as they may think fit in respect of the removal of such rubbish from such public road, or, with the consent of the occupier of any house or land, from such house or land.

184B. Whenever any order as provided in the last preceding section shall have been published in a municipality, every occupier of any house or land who shall place, or who shall allow his servants to place, rubbish on a public road at other than the appointed times, shall be liable to a fine of twenty rupees"

The HON'BLE BABOO KRISTODAS PAL objected to that portion of the section which authorized the Commissioners to charge fees for the removal of rubbish. Hon'ble members were aware that one of the primary duties of a municipal body was to attend to the conservancy of the town; in other words, to remove the sweepings and rubbish, and clean the roads and drains. This

duty was now performed without any additional charge. The amendment did not confine the charging of fees to the removal of professional or business rubbish. The term "rubbish" had been used in such a comprehensive sense that it would include rubbish ordinarily thrown out from houses as well as rubbish thrown out by reason of any trade or business. He would therefore move the omission from section 184A of the words "from such public road or" so as to confine the operation of the section to rubbish removed from within private houses.

The HON'BLE SIR STUART HOGG said, in his view of the case it was no part of the business of a municipality to remove rubbish collected in private houses. Undoubtedly it was their business to remove the sweepings of the roads and the dust accumulated on them, but not to remove the filth collected in the houses of private individuals. It was true that it was so done in Calcutta, but it was certainly not so done in London or elsewhere; in those places the work was done by private contract. In Calcutta the Municipality raised high rates, and did the work, but the same observations did not apply to outlying towns in the mofussil. He thought the section as drafted should stand: it was left optional to municipalities in the mofussil to charge or not, as they thought fit.

The HON'BLE MR. BELL said his experience was contrary to that of the hon'ble member who had just spoken. The rubbish and sweepings from houses must be put upon the roads. In all mofussil municipalities with which he had been connected, conservancy carts went round and removed the rubbish deposited on the roads without any charge. It seemed to him that these were charges which the municipality ought to bear. He would retain the section, omitting from section 184A all the words from the words "and the Commissioners may charge" to the end of the section.

The HON'BLE BABOO KRISTODAS PAL withdrew his amendment in favor of that proposed by the Hon'ble Mr. Bell.

The HON'BLE MR. BELL'S amendment was then put and negatived.

The HON'BLE MR. DAMPIER moved by way of amendment the omission from section 184A of the words "from such public road or" and the addition of the words "or in respect of the removal from such public road of any rubbish which has accumulated in the course of a trade or business."

The motion was carried, and section 184A as amended was agreed to.

Section 184B was agreed to.

Section 219, empowering the Commissioners to maintain an establishment for the purpose of removing offensive matter, the further consideration of which was postponed, was, on the motion of the HON'BLE MR. DAMPIER, omitted.

The HON'BLE BABOO KRISTODAS PAL moved the omission of sections 249 to 255 (the *bustee* sections) on the same grounds that he had urged at the last meeting for the omission of some of the sections which were called "building regulations." These sections were mostly taken from the Calcutta Municipal Bill, and the reasons which applied to Calcutta did not, in his humble opinion, apply with equal force to mofussil municipalities. He thought that if there was a separate chapter in the Bill dealing with the Suburbs and Howrah, these provisions might apply. But as these sections might be enforced with the

sanction of the Lieutenant-Governor in any mofussil municipality, he thought it was placing too much power in the hands of the Commissioners. The necessity for *bustee* reform did not exist in the municipalities in the interior, where the population was not so dense, and the habitations of the people were not so unhealthy, as were to be found in some of the *bustees* in Calcutta. In the mofussil the habitations of the poor were generally in open places, and unhealthiness proceeding from overcrowdedness could not be said to exist. Besides, the means of drainage in mofussil towns was not such as to admit of the efficient draining of *bustees:* the water-supply there was very deficient and defective; and he thought that before the inhabitants of such places were called upon to improve their *bustees*, the municipalities should be required to provide the necessary means of improvement. In many of these towns good drinking water could not be had, and until the municipalities supplied the means for preserving health, it was too much to require the poor inhabitants to conform to those rigid sanitary rules which were applicable to the metropolis of the country.

On these grounds he objected to these sections. He believed that they might be applicable to some particular municipalities; but the Bill made no exception whatever. The provisions of these sections were very comprehensive, and he thought they ought not to find a place in this Bill.

The HON'BLE MR DAMPIER said, the hon'ble member had observed that this Bill made no distinction as to places. The Bill enacted provisions to be used where they were required to be used. And it seemed impossible in matters of this sort to avoid leaving a discretion in the hands of the executive Government. He did not see why these provisions should not be required at Dacca and Moorshedabad, as well as Howrah and the Suburbs. He should be the last to expect that the Government would introduce these provisions into distant municipalities, rural municipalities so to say, in which the population was sparse and not crowded: he thought that the reason which made them good for Calcutta made them good for some of the mofussil municipalities, and he thought power should be given to the Government to extend them to such places.

The Council divided:—

Ayes 2.	*Noes* 6.
THE HON'BLE BABOO KRISTODAS PAL.	THE HON'BLE NAWAB SYED ASHGUR ALI.
„ BABOO JUGGADANUND MOOKERJEE.	„ BABOO RAMSHUNKER SEN.
	„ MR. BELL.
	„ MR. REYNOLDS.
	„ SIR STUART HOGG.
	„ MR. DAMPIER.

So the motion was negatived.

On the motion of the HON'BLE MR. DAMPIER a verbal amendment was made in section 255.

Section 256 required markets, slaughter-houses, &c., to be properly drained.

The HON'BLE BABOO KRISTODAS PAL moved the omission of this section and of section 257 on the same grounds which he had urged for the omission of the *bustee* sections. He thought the general provisions of the law relating to nuisances would be sufficient to make people keep these places in good condition, but to

require them to cause the floors and drains to be paved with stone or burnt brick, and to provide a sufficient water-supply where there was no supply of water, would be very expensive, and in many cases would lead to the closing of markets and slaughter-houses.

After some conversation the motion was put and negatived, and the sections were agreed to.

Sections 258 and 259 were agreed to.

On the motion of the HON'BLE MR. DAMPIER the second paragraph of section 260 was omitted as unnecessary.

Sections 261 to 264 were agreed to.

A verbal amendment was made in section 265.

Sections 266 to 268 were agreed to.

On the motion of the HON'BLE BABOO KRISTODAS PAL the following section was inserted after section 268:—

"The Commissioners at a meeting may from time to time out of the municipal fund provide for the burial and burning of paupers, free of charge, within the limits of a municipality."

In section 269 the following were omitted from the list of offensive or dangerous trades—

Yard or depôt for trade in "coal, charcoal, golpatta, bamboos;"
Shop for the sale of "fish."

And the provision for charging "an annual fee not exceeding two rupees for each license" was also omitted.

Section 270 was agreed to.

A verbal amendment was made in section 271.

Section 272 was agreed to.

In section 273 verbal amendments were made so as to exclude shepherds and persons keeping less than ten head of horned cattle from the necessity of taking out a license.

In section 274 the word "shepherd" was omitted, and the penalty for omitting to take out a license was reduced from Rs. 100 to Rs. 50.

Sections 275 to 280 were agreed to.

The HON'BLE BABOO KRISTODAS PAL said, he thought it was wrong on principle to allow the Municipal Commissioners to devote their funds to speculations of this kind. In most municipalities private markets were in existence in sufficient numbers, and it would necessarily cause conflict between private individuals and the Commissioners if these were permitted to establish markets with the aid of the municipal fund. He was not aware if any complaint existed in mofussil towns in consequence of the want of a sufficient number of markets. It was certainly desirable to keep markets in proper condition, and sanitary provisions ought to be enacted for that purpose. But to enable the Commissioners to establish markets out of the municipal fund would be to arm them with power to fritter away their resources without adequate advantages to the people. On these grounds he moved the omission of sections 281, 282, and 283.

The HON'BLE MR. DAMPIER said, the subject of these sections had been so thoroughly discussed outside this Bill that he need hardly say anything by

way of reply to the hon'ble member's motion. The whole question at issue was whether the establishment of good markets under the circumstances was a good or a bad thing. The Council had already affirmed the principle of these sections in the Calcutta Act. But in deference to the British Indian Association the Select Committee had introduced a provision which required the market fund to be kept entirely distinct from the municipal fund; so that any one could see in a moment how a market was getting on, and whether it was a charge upon the municipal fund or not. He might also point out that by section 267 the Commissioners were bound to license a private market unless there were sanitary objections against it.

The motion was then put and negatived, and the sections were agreed to, a verbal amendment being made in section 281.

Sections 282 to 288 were agreed to.

A verbal amendment was made in section 289.

Sections 290 to 293 were agreed to.

Section 294 related to the framing of bye-laws.

After verbal amendments made on the motion of the HON'BLE MR DAMPIER, the following proviso was, on the motion of the HON'BLE BABOO KRISTODAS PAL, added to the section:—

"Provided that no fee or toll shall be levied under the bye-laws which is not expressly sanctioned under this Act."

Sections 295 to 298 were agreed to.

Section 299 was as follows:—

"299. If the Commissioners of any municipality fail to maintain, within the limits thereof, any road which without such limits is maintained by a District Committee under the Road Cess Act, 1871, or to pay for the municipal police, or if the Commissioner of the division shall have reason to believe that the Commissioners are failing to fulfil any obligation imposed upon them by this Chapter,

the Commissioner of the division in which such municipality is situated may, with the sanction of the Lieutenant-Governor, convene a Committee consisting of—

(*a*) the Magistrate of the district, or the Magistrate of the division of the district,
(*b*) the Executive Engineer of the division,
(*c*) the Civil Surgeon of the district,
(*d*) and two members, one of whom shall be nominated by the Commissioner of the division, and the other by the Commissioners at a meeting;

and such Committee shall inquire into and report on the state of the Municipality.

The Lieutenant-Governor may, on the report of such Committee, call upon the Commissioners by a requisition in writing forwarded to the Chairman, and published in the *Calcutta Gazette*, to raise the necessary funds and carry out the purposes of this Chapter;

And if the Commissioners neglect, for the period of three months from the date of such publication, to comply with such requisition, the Lieutenant-Governor may direct the Magistrate of the district to raise the necessary funds under the provisions of this Chapter, and carry out the purposes thereof in respect of roads, police, and the cleansing of the municipality; and for such purposes the Magistrate of the district shall have all the powers and rights conferred on the Commissioners and the Commissioners at a meeting, by this Act, and shall exercise such powers and rights until the said Lieutenant-Governor shall otherwise direct"

The HON'BLE MR. DAMPIER moved the omission of the words from the beginning of the section to the words "the Commissioner of the division in which such municipality is situated" in the beginning of the second paragraph, and the substitution of the following:—

"If the Commissioner of the division shall have reason to believe that the Commissioners have failed to pay for the municipal police as required by this Act, or have failed to maintain within the limits of the municipality any road which without such limits is maintained by a District Committee under the Road Cess Act, 1871;

or have failed to maintain in proper order the roads within the municipality;

or have failed to make adequate and suitable provision for the cleansing and conservancy of the municipality to an extent likely to be prejudicial to the health of the inhabitants of any part thereof, the said Commissioners."

Also the insertion of the words "in respect of the objects mentioned in this section" after the word "chapter" at the end of paragraph 3; and the substitution of the words "the said objects" for the words "roads, police, and the cleansing of the municipality" in paragraph 4.

The HON'BLE BABOO KRISTODAS PAL said he was sorry he could not agree to the amendments proposed. This section very much resembled the controlling sections of the Calcutta Bill, and it gave much more power to the Commissioner of the division than the Government itself took in the Calcutta Bill. The tendency of the section was to keep the Municipal Commissioners continually and perpetually in the leading strings of the Commissioner of the division. If the Commissioner thought not only that the Commissioners did not pay for the police, but that the roads in the municipality were not kept in proper order, or that the Commissioners did not make adequate provision for the cleansing and conservancy of the municipality, then he might convene a Committee and carry out the provisions of the law. BABOO KRISTODAS PAL need not repeat that the funds of mofussil municipalities were so very limited, that they were not in a position to carry out the many improvements which were enjoined by this Bill; and it would therefore be most unjust to vest the Commissioner of the division with power to step in whenever he might think that the Commissioners had not done their duty: where the police were not paid, or where the Commissioners failed to maintain, within municipal limits, roads which without such limits were maintained by a Road Cess Committee, the Commissioners might justly be called upon to make suitable provision. But in other respects, he did not think it would be consistent with the principle of the Bill to vest these large powers over Municipal Commissioners in the Commissioner of the division. They might, he thought, be trusted to exercise their powers in other respects, especially as the Commissioner of the division, having practically a voice in the internal working of the municipality, would be necessarily acquainted with its affairs. The budget could not be passed without the sanction of the Commissioner of the division; no new work above a certain amount could be carried out without his approval; and BABOO KRISTODAS PAL did not think it was necessary or desirable to vest him with further powers. He therefore suggested that the provisions of this section should be limited to those two items, namely the maintenance of the police,

and the maintenance of such roads as were under the Road Cess Committee. He would therefore move the following amendments :—

The omission of the words "or if the Commissioner of the division shall have reason to believe that the Commissioners are failing to fulfil any obligation imposed upon them by this chapter" in the first paragraph.

The substitution of the words "provide for the roads and the police in the manner provided by this Act" for the words "carry out the purposes of this chapter" in paragraph 2.

And the omission of the words "and the cleansing of the municipality" in paragraph 4.

After some conversation, the HON'BLE BABOO KRISTODAS PAL'S amendments were negatived, and the HON'BLE MR. DAMPIER'S amendments were agreed to.

Sections 300 to 302 were agreed to.

Section 303 provided for the formation of Unions under Chapter III.

The HON'BLE BABOO KRISTODAS PAL moved the addition to the section of the following words :—

"But no agricultural village intervening shall be included in such union."

It had been affirmed at an early stage of the Bill that it was not the object to extend municipal taxation to agricultural villages; he therefore proposed the insertion of these words. It was true that these towns were not, properly speaking, municipal towns; they were in fact towns under the Chowkidaree Act XX of 1856; but agricultural villages were also not included in that Act. He found from a despatch of the Court of Directors on the passing of that Act that the object was to exclude agricultural villages.

The HON'BLE MR. DAMPIER said he must again explain that this Chapter of the Bill was really a consolidation and nothing else of Act XX of 1856 and the many existing laws which have been grafted on it; and this section 303 would be found to be an exact reproduction of Act XX of 1856. There was no such exception of agricultural villages in the Act, and it might be that there had been abuses; but it was out of place to bring in such an amendment as this when the provisions of this Chapter were only a re-enactment of the existing law.

After some conversation the motion was carried, and the section as amended was agreed to.

A similar amendment was made in section 304.

Section 305 provided that the Magistrate should raise in every town the expense of the police, and such sum in addition as he might think fit for "cleaning the town or in lighting or otherwise improving it."

The HON'BLE BABOO KRISTODAS PAL thought that good drinking-water was of much more practical importance than lighting, and he would therefore move that the words "in providing drinking-water" be substituted for the words in lighting."

The HON'BLE MR. DAMPIER explained that "lighting" had all along been one of the purposes to which the funds might be applied under Act XX of 1856; he would however have no objection to include "drinking-water" as one of the objects in addition to lighting.

The motion as amended on the suggestion of Mr. Dampier was carried, and the section as amended was agreed to.

Sections 306 to 314 were agreed to.

A verbal amendment was made in section 315.

Section 316 was agreed to.

A verbal amendment was made in section 317.

Sections 318 to 320 were agreed to

Section 321 provided a penalty for refusal to serve on the panchait.

The HON'BLE BABOO KRISTODAS PAL moved the omission of this section. The Chowkidaree Act was passed at a time when municipal institutions were just springing up into existence, and now that the Act had been in existence for twenty years, he thought the time had arrived for amending the law.

The HON'BLE MR. BELL thought it would be unadvisable to omit this section. There might be districts in which there was a difficulty to get panchaits.

After some conversation the motion was agreed to.

Sections 322 to 338 were agreed to.

A verbal amendment was made in section 339.

Section 340 specified the purposes for which rules might be framed under the Chapter, and amongst other things authorized the levy of "town duties."

The HON'BLE BABOO KRISTODAS PAL moved the omission of the word "or town-duties" in clause 2 of the section; he believed "town-duties" were not now levied anywhere.

The HON'BLE MR. DAMPIER observed that this Chapter IV was a mere reproduction of the existing Act XXVI of 1850. That Act could not be introduced otherwise than at the wish of the inhabitants. He believed it was in force in two places only, Jamalpore and another, and there, under the existing Act, the mode of taxation by town duties might be adopted if it was desired. The law was considered well adapted to young towns which sprang up about railway stations, and it had been determined to reproduce its provisions in this Bill. Places under that Act had the right to make rules for defining "the persons or property within the town or suburbs to be taxed for raising the moneys necessary for the purposes of this Act, whether by house assessment or town-duties or otherwise."

After some conversation, the further consideration of the section was postponed.

Sections 341 to 354 were agreed to.

Section 355 authorized the sale of unclaimed holdings for money due.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the section. He thought that if anybody had a right to unclaimed holdings it was the Government. If there were any holdings which were unoccupied, the conclusion was that any due which the Commissioners had in respect of such holdings ought to be written off as bad debts. But surely the Municipal Commissioners ought not to have the power of selling them off; for if nobody claimed the property within a year, the Commissioners under this section would carry the proceeds to the credit of the municipal fund. Such a power did not exist in the Calcutta Act. He thought the Government, and not the Municipality, ought to benefit in such cases, and that the ordinary law of limitation ought to apply.

The HON'BLE MR. DAMPIER said the section was introduced to meet a case of this sort. An epidemic came in and persons began to leave the place. Huts were deserted and fell to pieces. The Commissioners kept down the jungle, and kept clean the premises which had been deserted, as nobody else would move in the matter. Surely the Commissioners ought to be allowed to recover anything they could in such cases. With regard to the limitation of one year, the section simply provided that the proceeds were to be transferred to the municipal fund after the expiration of one year: there was nothing to prevent a person putting in his claim within the usual limitation of three years.

The motion was negatived and the section was agreed to.

Section 356 was agreed to.

A verbal amendment was made in section 357.

The HON'BLE MR. DAMPIER moved the introduction of the following section after section 357:—

"357A. Notwithstanding anything contained in section 3, Bengal Act VI of 1870 (*an Act to provide for the appointment, dismissal, and maintenance of village chowkidars*), the provisions of Part II of the said Act, relating to chowkidaree chakran lands, shall be applicable to all such lands which have been assigned before the passing of the said Act for the benefit of any part of a municipality, town, or station in which this Act may from time to time be in force, and all duties and functions which the panchait of a village or any member thereof is required to discharge under the provisions of the said Part, and all powers which the panchait of a village or any member thereof is authorized to exercise under the said Part, shall be exercised in respect of any municipality by the Commissioners thereof."

He said, hon'ble members were aware that Bengal Act VI of 1870 provided a system for securing the payment and the control of chowkidars in mofussil villages. And one of the chapters of that Act was to the effect that chakran lands, which had been assigned to provide for the performance of police duties, might be assessed at half rates and given up to the zemindar entirely, the zemindar paying revenue on such lands at half the usual rates only, instead of their being held as before by a chowkidar who, as a condition of his tenure, was bound to give a certain amount of police service and a certain amount of service to the zemindar. It was assumed that the interest of the zemindar and the public in the chowkidar's services was half and half. There was a provision in the Act that Commissioners might be appointed to identify these chakran lands, and it enacted that the rent payable by the zemindar should be paid over to the panchait, who should devote it to the purpose of paying chowkidars. In the Burdwan district there had been a good deal of stir about this matter, and it had been found that there was a great amount of chakran lands within the limits of chowkidaree unions, and it was proposed that there the land should be assessed under the Act. But on looking at the law, Act VI of 1870, it was found that in section 3 there was a provision of which the effect was to prevent that being done within the limits of municipalities. The reason of the exclusion appeared to be this, that in framing Act VI of 1870 they were dealing with villages and not municipalities, and were providing that the rental of land should be dealt with by the panchaits who were called into existence as a part of the scheme of that Act. In municipalities and chowkidaree unions there were no such panchaits. In fact the Act was not dealing with towns at all

but with rural villages; and therefore it expressly excluded from its own operation chakran lands which lay within the limits of municipalities. Section 3 of Act VI of 1870 ran as follows:—

"It shall be lawful for the Magistrate of the district by a sunnud under his hand and seal to appoint not less than three nor more than five persons to be a panchait in any village containing more than sixty houses, within the district of which he is in charge. Provided that no such panchait shall be appointed in any village to which the provisions of Act XXVI of 1850, or of Act XX of 1856, passed by the Legislative Council of India, or the provisions of Act III of 1864, or of Act VI of 1868, passed by the Lieutenant-Governor of Bengal in Council, shall have been extended."

Then the subsequent sections of the law said that the sections which dealt with chakran lands should not be applied in any place where there was not a panchait. But under section 3 you might not appoint a panchait in municipalities, and therefore you could not apply the chakran provisions to such places. He thought it was obvious that it would be very desirable to deal with chakran lands within the limits of municipalities in the same manner as they were dealt with in villages under Act VI of 1870; and as on the present occasion the Council were dealing with towns, he had, at the instance of the Government, drafted the section which he now moved should be introduced in the Bill.

The Hon'ble Baboo Kristodas Pal said he was sorry that this important question was raised at the fag end of the discussion. The hon'ble member had given the Council his theory of the cause of the omission of the assessment of chakran lands within the limits of municipalities by referring to the fact that Act VI of 1870 provided a machinery for panchaits and for assessments, and as the Municipal Acts did not provide that machinery, therefore the chakran provisions of Act VI of 1870 did not apply to municipalities. Baboo Kristodas Pal appealed to his hon'ble friend to refer to the section which he had read, and say whether, under Act XX of 1856, there was not a panchait in existence. Still it was enacted there that no such panchait should be appointed in villages which were under the provisions of Act XX of 1856.

In other words, the chakran clauses of Act VI of 1870 were not extended wherever Act XX of 1856 was in force, although a panchait was then in existence. Therefore the theory of his hon'ble friend did not hold good.

So there must be some other cause and some very weighty reason why the chakran clauses were not extended to such places as were under the operation of Act XX of 1856, or Bengal Acts III of 1864 and VI of 1868. Now, the controversy about chakran lands had a long history. Hon'ble members were aware that since the year 1831 the question of bringing chakran lands under assessment had been more or less under consideration, and Committee after Committee had been appointed and officer after officer had been called upon to report upon the subject. The last of these reports was that made by Mr. McNeille. Upon the submission of that report a Committee consisting of official and non-official gentlemen was appointed to go into the whole question, and the result of its labors was the chakran clauses of Act VI of 1870. So that after many years of enquiry and deliberation the Government decided

The Hon'ble Mr. Dampier.

that chakran lands should be dealt with in rural villages in the manner provided by that Act. It was now proposed to extend the same provisions to municipalities.

BABOO KRISTODAS PAL asked whether his hon'ble friend was aware that these lands, like others, were liable to assessment: if they were, should they be subject to double assessment? The question ought to have been considered in Select Committee first. At the first blush of the subject he was inclined to think that they ought not to be brought under municipal assessment. He did not say that if they were brought under Act VI of 1870 they should be exempt from municipal assessment; but the subject was a very important one, and should be carefully considered before the Council was asked to introduce into this Bill an innovation of this nature.

The HON'BLE MR. BELL said he happened to be one of the Committee on whose report Act VI of 1870 was passed; and he thought the hon'ble member labored under some slight misapprehension as to what was recommended by the Committee and embodied in the Act. The Village Chowkidars' Act merely referred to villages in which that Act was in force; and the provisions regarding chakran land were necessarily limited to those particular villages. One reason why the provisions of the Chowkidars' Act in regard to chakran land were not extended to municipalities was this, that the question of municipalities was not before the Council when that Act was discussed. Section 48 of the Act provided that—

"All chowkidaree chakran lands before the passing of this Act assignedf or the benefit of any village in which a panchait shall be appointed, shall be transferred in manner and subject as hereinafter mentioned to the zemindar of the estate or tenure within which may be situate such lands."

The object of the Act was to utilize chakran lands by assessing them with rent and devoting the rent to the payment of the chowkidars. It seemed to him that the amendment was one of exclusive gain to municipalities. At present, if there was chakran land in a village, the chowkidar who lived on that land was absolutely useless to the municipality. The object of the amendment was to allow the municipality to make over the land to the zemindar and receive rent for the land. Therefore, as far as the amendment went, it would be a great relief to the burden of the tax-payers.

The hon'ble member objected that this land would be subject, first, to municipal assessment, and secondly, to chowkidaree assessment. But the service rendered by the chowkidar was paid in lieu of rent; and therefore there would be no double assessment. If we left the land as it stood, chakran lands in municipalities would be liable to no assessment at all. He quite agreed that the general question of dealing with chakran lands was a very difficult one, and if any new principle had been involved in the present proposition, he should have advised that the subject be postponed for further consideration. But as he understood it, the hon'ble member merely wished to introduce into municipalities an arrangement which had already been carried out in chowkidaree unions.

After some conversation the Council divided :—

Ayes 5.	*Noes* 3.
The Hon'ble Baboo Ramshunker Sen.	The Hon'ble Nawab Syed Ashgar Ali.
" Mr. Bell.	" Baboo Kristodas Pal.
" Mr. Reynolds.	" Baboo Juggadanund Mookerjee.
" Sir Stuart Hogg.	
" Mr. Dampier.	

The motion was therefore carried.

On the motion of the Hon'ble Mr. Dampier the following section was added to the Bill :—

Section 360.—"If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do, any official act,

or for showing or forbearing to show, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person with the Commissioners or with any public servant or with the Government as such, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both."

The first and second schedules were agreed to.

The third schedule prescribed the maximum rates of tax for horses and carriages.

The Hon'ble Baboo Kristodas Pal moved that the schedule annexed to Act III of 1864 be substituted for this schedule. He found, on comparing the two schedules, that material alterations had been made in this schedule from the existing law. For instance, in Act III of 1864 the charge for every four-wheeled carriage on springs drawn by one horse or a pair of ponies was Re. 1-8; in the schedule of the Bill the tax was raised to Rs. 3. Then for every four-wheeled carriage without springs the tax in the existing law was Re. 1-8. These two classes had been amalgamated together in the new schedule, and the tax had been raised to Rs. 3. The present rate for a two-wheeled carriage on springs was Rs. 2-4; in the Bill it was Rs 2-8. And the tax for a two-wheeled carriage without springs was at present 12 annas, whereas in this schedule it was raised to Rs. 2-8. The Bill appeared to make no distinction between carriages on springs and without springs. And as the principle of the Bill was to impose no additional taxation, he thought the schedule of the existing law should be substituted for the schedule in the Bill.

After some conversation the Council divided :—

Ayes 3.	*Noes* 5.
The Hon'ble Nawab Syed Ashgur Ali.	The Hon'ble Baboo Ramshunker Sen.
" Baboo Kristodas Pal.	" Mr. Bell.
" Baboo Juggadanund Mookerjee.	" Mr. Reynolds.
	" Sir Stuart Hogg.
	" Mr. Dampier.

The motion was therefore negatived, and the schedule as it stood was agreed to.

The fourth and fifth schedules were agreed to.

The Council was adjourned to Saturday, the 25th instant.

Saturday, the 25th March 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL.
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble NAWAB SYED ASHGAR ALI DILER JUNG, C.S.I.

CALCUTTA MUNICIPALITY.

THE HON'BLE SIR STUART HOGG said before proceeding to make the motion which stood in his name, he would ask leave to propose a verbal alteration in the 9th schedule, which referred to the registration of deaths in the town. After the 8th column of the form prescribed in that schedule, he proposed to add the following heads of information, "residence at the time of death," and "residence previous to last illness." The object of these two additions to the form was to enable the municipality to distinguish between persons who died in the town and were actual residents of Calcutta, and those who, although they died in Calcutta, were, previous to their last illness, residents beyond municipal limits. The alteration had been suggested by the Health Officer, Dr. Payne, who found it difficult to distinguish between those two classes of deaths.

The motion was agreed to.

The HON'BLE SIR STUART HOGG moved that the Bill to consolidate and amend the law relating to the municipal affairs of Calcutta be passed. In doing so, he said that since the last publication of the Bill in the *Calcutta Gazette*, and indeed since it had been considered by the Select Committee, to whom it was referred with the view of considering how far it was possible to alter the control sections so as to meet the wishes of certain memorialists, the Council had only received one memorial in a general form from the Special Committee appointed by the Justices of the Peace. Previously to that the Council had received a memorial from the Justices in which they at a very large meeting generally approved of the Bill. That was previous to the introduction of the sections which gave to Calcutta the elective system now contained in the Bill. Since then the Justices had appointed another Committee, who had not only remonstrated against the elective system, but had made suggestions as regards particular clauses of the Bill to which they had previously given their assent:

as all that the Justices had said had been fully considered by the Select Committee of this Council, before whom the Justices had been represented by Counsel, he need not take up the time of the Council by referring to those matters again.

Another memorial which had also been received was from Baboo Prannath Pundit, who prayed the Council to reconsider section 143, which provided that people residing outside the municipal limits and not paying municipal taxes, should not, without the express permission of the Justices, be permitted to take water from the stand-pipes in the town. Seeing that such people did not pay the water-rate, SIR STUART HOGG did not think that it could be any hardship to enact that, without express permission, such persons should not take the water which was paid for by the residents of the town. He did not think that the representation placed in his hands deserved the consideration of the Council. He would therefore now move that the Bill be passed.

The HON'BLE BABOO KRISTODAS PAL said, before this motion was put to the vote, he desired to say why he considered it his duty to oppose the passing of the Bill. He would not take up the time of the Council by reiterating the objections which he had taken to several portions of the Bill. He readily acknowledged the patience and courtesy with which the Council had heard his arguments and objections, as well as the various suggestions which he had made for the improvement of the Bill. He would now simply sum up the reasons upon which he considered it his duty to protest against the passing of the Bill:—

Firstly.—Because the Bill, though it professes to concede self-government to the people of Calcutta, leaves the appointment and dismissal of the Chief Executive Officer in the hands of Government, and thus destroys one of the most essential characteristics of self-government.

Secondly.—Because the Bill sanctions the union of the functions of Chairman of the Commissioners and Commissioner of Police in the hands of one person, which is detrimental to efficiency, tends to divide responsibility, and opens a door to abuse of power. This centralization of authority is not required in the interest of the town, inasmuch as the experience gained in the sister capitals of Madras and Bombay shows that the separation of the two offices works there smoothly and satisfactorily.

Thirdly.—Because the Bill sanctions additional objects for municipal expenditure, which, though optional, may be enforced at the discretion of the Commissioners, and which, when enforced, are likely to result in additional taxation. The multiplication of municipal expenditure on objects of secondary importance, when the town is burdened with a heavy debt, and its primary requirements cannot be satisfactorily met from want of funds, is much to be regretted.

Fourthly.—Because the Bill reduces the hours of the supply of water at high pressure from 17 to 3 during twenty-four hours, though it enhances the water-rate from 5 to 6 per cent. The reduction of the water-supply will place the people at considerable disadvantage and imperil the success of the drainage system.

The HON'BLE MR. BROOKES said he also desired to record his protest against the passing of this Bill. He cordially agreed in the remarks which had fallen from the hon'ble member who had just spoken. Every argument which could possibly be made use of against the various sections of the Bill which had been objected to had been brought to the notice of the Council

The Hon'ble Sir Stuart Hogg.

by the hon'ble member and himself, and it now only remained for them to record their protest against the passing of the Bill that day.

The HON'BLE BABOO JUGGADANUND MOOKERJEE referred to the petition which had been received from Baboo Prannath Pundit regarding section 143 of the Bill. His desire was to ask the Council to consider whether they could not modify the section in some way. The provision as it stood would be to some extent a hardship on persons who were not resident in Calcutta, but who, from their residing in proximity to the town, had enjoyed the benefits which the water-supply conferred upon the residents of Calcutta. Pure and good water was wholly a matter of necessity, and not a luxury, to those who had been accustomed to it.

The HON'BLE SIR STUART HOGG said he would point out that the Bill in its present form absolutely accorded to the residents of the suburbs an advantage which they did not now possess. Under the existing law the Justices had no power whatever to grant permission to persons outside the town to take any water. But by section 143, with the view of meeting the convenience of people living outside the town, the Council had thought fit to declare that the Commissioners should have power to allow persons residing outside the town to take water from the stand-posts on such terms as the Commissioners might think fit. He did not think it was any hardship to declare by legislation that people who did not pay for the water had not the right to take water unless with the sanction of the people who did pay for it.

The motion that the Bill be passed was then put:—

Ayes 8.	*Noes* 3.
THE HON'BLE BABOO RAM SUNKER SEN.	THE HON'BLE NAWAB SYED ASHGUR ALI.
" " JUGGADANUND MOOKERJEE.	" BABOO KRISTODAS PAL.
" MR. BELL.	" MR. BROOKES.
" " REYNOLDS.	
" SIR STUART HOGG.	
" MR. DAMPIER.	
" THE ADVOCATE-GENERAL.	
" MR. SCHALCH.	

So the motion was carried and the Bill was passed.

MOFUSSIL MUNICIPALITIES.

ON the motion of the HON'BLE MR. DAMPIER the Council proceeded to the further consideration of the Bill to amend and consolidate the law relating to municipalities.

Section 3 declared under what classes existing municipalities would fall.

The HON'BLE BABOO KRISTODAS PAL said this section was intimately connected with sections 13, 303, and 304. It might be in the recollection of the Council that when the question of forming fresh municipal unions under this Act was under consideration, he called attention to the injustice of including outlying villages in these unions, and it was at last agreed that such villages should not be included in fresh unions which might be formed under sections 13, 303, and 304. The discussions of the Council on this point showed

that it recognised the injustice of including such outlying villages in municipal unions. If the injustice of including such villages in fresh unions was admitted, he did not see why the injustice should be perpetuated in existing unions; and if the opportunity were given to the Municipal Commissioners and the Government, he did not doubt that they would rectify it. Section 3 was so worded that it would not be in the power of the Commissioners or the Government to exclude these outlying villages from such unions. Several hon'ble members had testified from their own experience to the hardship and injustice of including these villages; and therefore, in accordance with the decision already arrived at, he would move the addition to the section of the following words—

"and within six months from the date on which this Act shall come into force, the Commissioners at a meeting, with the sanction of the Lieutenant-Governor, may exclude from the limits of the municipality such place or places as are described in sections 13, 303, and 304."

If the Council accepted the principle of the amendment, the words could be afterwards altered so as to fit into the legal phraseology of the Bill. But the broad question was that if it was unjust to include outlying villages in unions to be formed thereafter, surely the injustice was equally patent in refusing to exclude villages, already included in unions and municipalities, which ought not, according to reason and justice, to have been so included.

The HON'BLE MR. DAMPIER said he must oppose this motion. No doubt the Council had by their decision in section 13 affirmed the principle that they thought the conditions imposed should be adhered to in bringing new places under municipal legislation. In so far he quite admitted that the Council had already done considerable good which the executive would, he hoped, follow in dealing with existing municipalities and municipal unions. But he must say that he thought some weight should be given to the fact of towns or tracts having been subject to a certain law for a number of years. We had said for instance that no place should be a municipality which did not contain at least three thousand inhabitants. Now, he believed that if a place had been a municipality for ten years, and it contained only two thousand inhabitants, it would not be right in effect to reduce it to the status of an agricultural village again after it had had the status and dignity of a municipality for ten years.

Then he wished the honorable gentleman to observe that the section as it was drawn left it quite open for the Commissioners to do what was proposed. It only provided that the machinery of such places should not come to a dead-lock on the passing of the Act. Everything would proceed in existing municipalities and towns according to present qualifications. But it had been specially provided that the local Government might impose other qualifications. The section provided that "unless and until the Lieutenant-Governor should otherwise direct by notification." There was therefore full power given to the Lieutenant-Governor; and the Commissioners might, and in extreme cases no doubt would, move the Lieutenant-Governor to exercise that power. At any rate it would be most dangerous for the Government to accept the amendment proposed, so far as MR. DAMPIER understood it, without ascertaining what the facts were. The Bill

The Hon'ble Baboo Kristodas Pal.

had now been weeks and weeks before the Council, and no notice of this amendment had been formally given. Not that he should press that ground at all, but he might say that the amendment could not be accepted by the Government without seeing how it affected the status of existing municipalities and townships.

The HON'BLE MR. BELL said he thought there were two very short objections to the amendment proposed. First, that it was opposed to the well-known principle that you ought not to change the status of a public body without giving that body notice. The effect of the amendment would be that you would alter the status of existing municipalities without giving the inhabitants any chance of being heard against the change proposed. The second objection was that it adopts the dangerous principle of giving retrospective effect to legislation. The only safe course was to apply the Bill prospectively to our municipalities, but if the amendment were adopted, the new principle would at once apply to all municipalities. He thought it would be very dangerous if the Council were to amend the section as proposed.

The HON'BLE MR. DAMPIER said a great deal had been made of the point that this Bill was not intended to increase taxation; that was the way the argument was put. But he thought the fair way to state the case was that the Bill was mainly a Consolidation Bill, introducing minor amendments where they were desirable, but not introducing any radical changes in the law. Now, with regard to increased taxation, if an extra rupee was put on, the objection had been taken that the object of the Bill was not to increase taxation. On the other side most sweeping innovations were introduced at the instance of hon'ble members without any objection being taken that this was mainly a Consolidation Bill.

The HON'BLE BABOO KRISTODAS PAL said he owed it to himself to offer an explanation on the point urged by the hon'ble mover. He said that this was a Consolidation Bill, with only a few minor alterations in the existing provisions of the law. The Council had now come to the end of the Bill, and BABOO KRISTODAS PAL would just state *seriatim* some of the subjects with which this Bill dealt. And he would appeal to the hon'ble member himself to say whether the many sections which had been introduced regarding conservancy, building regulations, bustees, slaughter-houses, markets, and other things, were not, to use his own expression, sweeping innovations; whether the provisions on these subjects were quite consistent with his statement of objects and reasons; and whether the single proposition which BABOO KRISTODAS PAL had ventured to advance for the purpose solely of rectifying the glaring injustice which was admitted on all hands, would materially alter the character of the Bill. Of course he was entirely in the hands of the Council; but he submitted that when an injustice was admitted, and when it was a glaring injustice, no technical objection ought to prevent the Council from doing justice to the poor people in outlying villages which were unjustly included in municipal unions.

The HON'BLE SIR STUART HOGG thought that the hon'ble member's object would be better attained by an amendment of section 9. He should therefore

move that to that section be prefixed the words "On the representation of the Commissioners or by his own motion."

The HON'BLE BABOO KRISTODAS PAL's amendment was withdrawn, and Sir Stuart Hogg's amendment was agreed to.

The postponed sections 4 and 5 were agreed to.

Section 2, the interpretation section, was agreed to.

In Section 1, for the second paragraph the following clause, taken from the Calcutta Municipal Consolidation Bill, was, on the motion of the HON'BLE MR. DAMPIER, substituted :—

"and it shall come into force as the local Government may direct, not being more than three months after the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General."

The preamble and title were agreed to, and the Bill as settled by the Council was ordered to be published in the *Calcutta Gazette*.

SETTLEMENT OF RENT DISPUTES.

The HON'BLE MR. DAMPIER presented the report of the Select Committee on the Bill to provide for inquiry into disputes regarding land, and to prevent agrarian disturbances; and moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE BABOO KRISTODAS PAL enquired whether the settlement of the clauses of this Bill now was to be considered final or only provisional. If it was not the object of the Council to proceed with this Bill in a hurry, without giving an opportunity to those interested to make known their objections, he had no objection to the settlement of the clauses at the present sitting of the Council. He was informed that persons interested in this Bill were desirous of expressing their views regarding it, and they had had no time to do so since the publication of the Select Committee's report.

HIS HONOR THE PRESIDENT stated that the settlement of the clauses would be provisional; there was every desire to afford those interested an opportunity to submit any representations they might have to make, and it was therefore, he thought, better that the Council should consider the clauses of the Bill and settle them provisionally, so that the public might see the Bill in the shape in which it was likely to be passed.

Section 3 provided that if it should appear to the Lieutenant-Governor that a serious dispute existed in any tract of country as to any question in respect of the adjustment of rents, or as to arrears of rents, the Lieutenant-Governor might declare the provisions of the Act to be in force in such place.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "in respect of the adjustment of rents or as to." His reason for making that motion was that the Bill did not provide any principle upon which the adjustment of rents was to be made. The hon'ble member had pointed out that this was merely a Procedure Bill. BABOO KRISTODAS PAL had since carefully considered the Bill, and found that it was provided in section 13 that the Collector should, as far as possible, follow the procedure prescribed in Act X of

1859: he might therefore follow that procedure as far as he chose. There was nothing to show that he was to be guided by the principles laid down in that Act for the enhancement of rent.

[The HON'BLE THE ADVOCATE-GENERAL remarked that the hon'ble member was under a misapprehension. The Collector had no option, but was bound to follow the procedure of Act X of 1859 as far as possible—as far as he could go. Take the case of equitable rents; there the rule of proportion laid down in Thakoorance Dossee's case must be applied. But if the rule of proportion there laid down could not be applied, then the Collector was to be guided by his own judgment, and act according to equity and good conscience.]

None was better aware than the learned Advocate-General that the rule of proportion laid down by the High Court was not easily workable, and therefore suits would be decided according to the varying judgment of the Collectors.

It was to this wide discretion he objected. He thought the law should lay down a number of definite principles, because one principle might not be applicable to all parts of Bengal; but if certain principles applicable to the varying circumstances of different districts were adopted, the Collector would have some guide in regulating the adjustment of rents.

The HON'BLE THE ADVOCATE-GENERAL said, during the discussions of the Select Committee certain rules had been framed by him, in conjunction with the hon'ble mover of the Bill, to enable the Collector to follow certain lines in the adjustment of rents. But they were objected to by the majority of the Committee. He for one was quite willing to agree to the motion of the hon'ble member. The grounds of enhancement were mentioned in section 17 of Act X of 1859. For instance, if the "value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot," then the Act said that a pottah should be given "at fair and equitable rates." The question in all cases was, what was the limit of enhancement. Thakoorance Dossee's case followed a certain rule of proportion, and practically one member of the proportion was not discoverable; and therefore the rule there given could not be followed. But inasmuch as the value of the produce had been increased, the Court must follow certain other rules to find out the rate of enhancement. Thakoorance Dossee's case was not exhaustive. The zemindar could not go without an increase of rent, because the rule there laid down could not be followed. The rules which had been framed were proposed not with the view to compel the Collector to follow them, but merely to point to certain principles which he might adopt; always bearing in mind that these principles were subject to the broad principle in the Act, that the rate must be "fair and equitable." These rules would be objectionable if in point of fact they were a sort of amendment of the Rent Act. But they were not proposed in the way of amendment; and if the principles contained in them were worked fairly and practically, they might be of much assistance to the Collector in arriving at an adjustment of rent. The rules which had been framed were as follows, and he proposed to insert them as a new section after section 14:—

"14A. Whenever in any suit instituted under the provisions of this Act it shall appear to the Collector that a ryot having a right of occupancy is liable to enhancement of the rent

previously paid by him on the ground that the value of the produce or the productive powers of the land held by him have been increased otherwise than by the agency or at the expense of the ryot;

or whenever in any such suit it shall appear to the Collector that such ryot is entitled to claim an abatement of the rent previously paid by him on the ground that the value of the produce or the productive powers of the land held by him have been decreased by any cause beyond the power of the said ryot,

the Collector shall, if possible, fix the rate of rent payable by such ryot so that it shall bear the same proportion to the rent which he previously paid for the same lands as the present average gross value of the produce of such lands bears to the average gross value of the produce of such lands at the time when the rent of such ryot was last fixed, or at any subsequent time during the tenancy of such ryot (not being less than $\binom{\text{five}}{\text{ten}}$ years before the institution of such suit) in respect of which such average gross value can be ascertained;

but if in any such suit the Collector shall not be able to ascertain to his satisfaction the average gross value of the produce of such lands as it existed at the time when the rent of the ryot was last fixed, or at any subsequent time during the tenancy of such ryot, not being less than $\binom{\text{five}}{\text{ten}}$ years before the date of the institution of such suit,

the Collector may determine the rate of rent payable by such ryot according to any of the following methods:—

(*a*) by fixing the rent of the ryot so that it shall represent such portion of the existing average gross value of the produce of the land held by him as the Collector shall consider fair and equitable with reference to the circumstances of each case;

(*b*) by fixing the rent of the ryot so that it shall represent such portion of the average net profits of the land held by him (after deducting from the average gross annual value of the produce of such lands such a sum as may be deemed proper on account of costs of production and disposal of such produce) as the Collector shall consider fair and equitable with reference to the circumstances of each case;

(*c*) by taking as the standard of comparison the rates which ryots having no right of occupancy pay in adjacent places, or in such places as the Collector may select, for lands of a similar description and having similar advantages; and by fixing the rates of rent to be paid by the ryot having a right of occupancy at such percentage below the rent which would be paid for the same lands by ryots having no right of occupancy as the Collector may consider fair and equitable with reference to the circumstances of each case."

The Hon'ble Mr. Bell said he had a strong objection to embody these rules in the Bill, which was not one of substantive law, but merely of procedure and jurisdiction. The result of introducing such rules, or any similar rules, would be that we should have the whole of Bengal in a blaze. An irresistible inducement would be held out to every zemindar to enhance the rents of his ryots in order that he might try the effect of these new principles. The object of the Bill was to settle disputes, not to foment them. But if these principles were inserted in the Bill, we should foment disputes throughout the length and breadth of the land. One of the principles laid down in the proposed rules was that a zemindar might enhance the rent of his ryots by taking as a standard what tenants-at-will in adjacent places paid for their land. What would be the result of such a principle? Why, the zemindar would only have to put up two or three fictitious ryots, and say, "these tenants are paying so much rent per beegha," and he would thus be able to enhance the rent of every ryot on his estate.

The Hon'ble Mr. Bell.

Again, MR. BELL would ask whether the three principles laid down in these rules were the only principles upon which the rates of rent could be adjusted. If rules were to be laid down, why should they not be laid down in the interest of the ryot as well as of the zemindar. But his objection was not only to the principles of these rules; he was strongly opposed to amending the substantive law of the land in a temporary measure of this sort. He felt confident that it would be most unadvisable to introduce new principles in a temporary measure of this sort, and he hoped the Council would not, when passing a temporary measure to settle disputes in regard to rent, allow a most important and substantive change in the law to be embodied as it were by a side-wind in the Bill. He felt sure that these proposals would be received with great opposition throughout the country, and that it would not be within the ability of the Council to pass the Bill without exciting the very feelings which the Bill was intended to allay.

The HON'BLE THE ADVOCATE-GENERAL said he did not think the hon'ble member who had just spoken had quite understood the principle upon which these rules were intended to be proposed. The object of the Bill was a summary enquiry for the purpose of adjusting disputes relating to rent; and until persons who were at issue with each other could have their disputes properly settled, they would resort to other means for settling their differences. The rules were intended for the purpose of enabling the settler of disputes to use his own judgment as to which should be the proper principle upon which the dispute should be settled. If these principles were not to be introduced, and the rule in Thakoorance Dossee's case was to be the sole standard by which the Collector should be guided, then in cases where it might be impossible to ascertain the first member in the rule of proportion there laid down, namely the rate of rent at the time of the last adjustment of rents, what principle was the Collector to follow in ascertaining the rate of rent? A man was entitled to a certain proportion of the increased value of the produce, and he brought a suit to obtain that increase of rent. It was impossible to determine the enhanced rent payable, and the suit was dismissed. Did that allay disputes? The ADVOCATE-GENERAL submitted that it rather fomented disputes. Therefore, so far from the principles proposed to be laid down by these rules being calculated to foment disputes, he thought they were likely to settle disputes.

With regard to the case put of the zemindar doing something by fraud, he submitted that every principle, however fair, might be defeated by fraud. Fraud was a fact in the case. If the zemindar gained a decree by means of fraud, he deceived the judge. But the ADVOCATE-GENERAL thought that such frauds would rarely be established if the Collector was vigilant and had experience of his district. Even the highest judicial tribunals miscarried sometimes in arriving at conclusions of fact. A case of fraud was exceptional: if it could be detected it would have no force.

The hon'ble member opposite (Baboo Kristodas Pal) had suggested that unless you had some principles upon which the adjustment of rents was to be made, what was the use of this Bill at all? Having seen the force of that objection, the ADVOCATE-GENERAL thought it his duty to embody some rules

which might assist the Collector to determine the rate of rent in those cases in which the rule in Thakooranee Dossee's case did not apply. All that was intended was to introduce, in case of a difficulty in dividing the proportion of increase between the ryot and the zemindar in consequence of the inapplicability of the rule of proportion laid down, some principles, not as absolute rules of law, but to assist the Collector in determining in such cases what would be a fair and equitable rate of rent. He further intended that if it were found that the principles embodied in these rules worked satisfactorily, thereafter, when any proposal for the amendment of the law was before the Council, these rules might be taken into consideration. As the law stood, the Collector must decide what was a fair and equitable rent. He must first follow the ruling in Thakooranee Dossee's case; and if he could not find out the different members of the rule of proportion there given, he must then either dismiss the suit, or he must decide according to his own judgment on the principle of what was "fair and equitable." Then which was best, that, what was fair and equitable should be described by fair lines for the Collector's assistance, or that it should be left entirely to his own discretion? The matter was unanswerable that the latter was preferable to the former; that the Collector's judgment should be guided by some principles, rather than that he should be left to his unfettered discretion. It was on these considerations that the ADVOCATE-GENERAL thought some rules should be put forward in this Bill; if he thought that the rules would have the effect of fomenting disturbances, he should have been the last to have proposed them. He suggested them because he thought that they would enable the Collector to give a modified ruling in those cases in which the ruling laid down by the High Court might not apply.

HIS HONOR THE PRESIDENT said, the third of the Rules which it was proposed to introduce (rule *c*) ran in this way—"by taking as the standard of comparison the rates which are generally paid by ryots having no right of occupancy in adjacent places, or in such places as the Collector may select, for lands of a similar description and having similar advantages." Now, he understood the hon'ble member on the right (Mr. Bell) to consider that this rule would induce the zemindar to set up tenants-at-will paying nominal rents, and by such nominal standard to endeavour to enhance the rents of the ryots. HIS HONOR was anxious to explain, in the first place, as the learned Advocate-General had remarked, that if a zemindar did so it would be an attempt to defraud, which he should hope would not be generally followed by gentlemen in the position of zemindars, and if the attempt were made, it ought to be found out. One could fancy the Civil Court being deceived by strong and skilfully prepared evidence; but the Collector, who had every sort of information of his district, ought not to be duped by any attempt of that kind. But be that as it might, HIS HONOR was anxious to explain to the Council what was a matter of great importance, that this was the very rule, and absolutely the very principle, on which all rents of occupancy tenants were adjusted in Northern India, in the Punjab, in Oudh, and in fact throughout Northern India. He ventured to say that there was no part of India in which this question was so minutely studied as in Northern India, and there was no province in which the variety of tenures was so great as

His Honor the President.

in Northern India. You took first of all the average of what was called the pergunnah rate, which was what the landlord could get in the market in the shape of rent from a tenant-at-will. That was taken as the basis of the adjustment, and favorable rents were all calculated on that basis. One man had 5 per cent. advantage as compared with ordinary rates; another man had 10 per cent.; another had 25 per cent.; and some had even 50 per cent. Hon'ble members who had served in that part of the country must be aware of this; and if the Council would consult the Punjab Tenants' Act they would see exactly the same principle laid down there. He was sanguine that something of the same kind might answer in Bengal, and it was satisfactory to see that principle suggested by so competent and experienced an officer as the learned Advocate-General. HIS HONOR did not see that this principle was open to the objection taken by the hon'ble member on the right (Mr. Bell). When the substantive law declared that the Collector should determine the rent upon fair and equitable rates, it was not an amendment of the law for the Council to lay down certain principles which the Collector might take into consideration. If they should say that the Collector should not decide what he should consider fair and equitable rates, but upon some other principle, that would be an alteration of the substantive law. But what the learned Advocate-General meant was, that in arriving at what was fair and equitable, the Collector might adopt certain principles, which was nothing more than to give something for his guidance.

The HON'BLE MR. BELL observed that no one had a greater experience than himself of the value of any opinion which the learned Advocate-General might give. But he regretted that he could not, in the present instance, agree with the learned Advocate-General that these rules would not change the substantive law. It was said that the Collector need not avail himself of these rules unless he pleased. But it was surely a change in the law to allow the Collector to make use of rules which were novel and opposed to the existing law. Then again, rule (*c*) allowed the Collector to fix the rates by a comparison with rents obtained by competition. Yet that was the very principle which thirteen judges of the High Court condemned in Thakooranee Dossee's case; and MR. BELL thought they rightly condemned it. The rule laid down in that case was that the rates should be fair and equitable customary rates, not that they should be determined by competition. The rates of rent could only be decided by competition in a country like England, where both sides were capitalists. Any attempt to fix rates by competition in a country like this would revolutionize the whole country. It was perfectly true, as pointed out by the learned Advocate-General, that fraud invalidated all proceedings; but MR. BELL's objection to this rule was that it would enable zemindars to enhance rent by setting up fictitious ryots, and that it would be almost impossible to detect fraud in such cases. If the zemindar placed three or four ryots on his land, and took from them kubooliyats at very high rates, how was the Collector to say that they were not *bonâ fide* ryots. Though MR. BELL, as he had said before, had great respect for anything that emanated from the learned Advocate-General, he must remind the Council that this principle of fixing rents by competition had been

condemned by thirteen Judges of the High Court. He thought the Council should pause before introducing a rule which had been so unanimously condemned. He felt convinced that if any fresh principles were introduced into this Bill, it would lead to disputes, and to one general attempt to enhance rents throughout the country. The learned Advocate-General said that the Collector very often was in great difficulty in fixing what were fair and equitable rates. When the Civil Courts had to determine what were fair and equitable rates, they had to apply certain principles for ascertaining that rate. [The ADVOCATE-GENERAL.—Hence the disputes.] Then, MR. BELL said, alter the substantive law. If the disputes arose from the state of the substantive law, the proper course was to amend that law. Therefore he did hope that the Council would not accede to the suggestion of the learned Advocate-General, and introduce these new principles in the Bill.

The HON'BLE THE ADVOCATE-GENERAL said, in reference to the observations which fell from the hon'ble member who had just spoken in regard to the decision of the thirteen judges of the High Court, he would point out that the great objection to the decision taken by Sir Barnes Peacock, namely that under Act X of 1859, the equity attempted to be administered by the rule of proportion to the ryot who was fourteen years in occupation was the same as that which was dealt out to the ryot who held from the time of the permanent settlement, was not met by the other Judges. Surely a different rule should be applied to a *khoodkhast kudeemee* ryot, from that which was applied to a man who was only fourteen years in possession. He did not propose to set aside the rule of proportion at all, or put forward a competitive system of letting land; he would leave it to the Collector to decide what was fair and equitable, only keeping his eye upon the rate of rent which was obtainable under the competitive principle. He merely asked the Collector to consider that broad fact; then having that fact before him, the Collector was asked to consider what was fair and equitable. The rules which were proposed were not hard-and-fast rules, but were proposed simply with the object that the Collector should take those principles into consideration in determining what was fair and equitable.

THE ADVOCATE-GENERAL observed that the law now left it absolutely to the Civil Court to decide what was fair and equitable in rent. It might go according to the rule of proportion, or any other rule. If it could not follow the rule of proportion given in Thakoorance Dossee's case, then it was to arrive at what was fair and equitable in some other way. But there was no rule laid down as to how the Court was to do so. Then did it amount to an alteration of the substantive law, if the Court were merely to follow one or other of three or four rules laid down for its assistance? These rules had been given to him by the hon'ble mover of the Bill. He thought them to be fair rules, and such as ought to be adopted. Some time or other the substantive law must be altered. But this was a tentative measure; and inasmuch as the Collector was left to his own discretion, and might adopt these rules or not as he thought fit, it appeared to the ADVOCATE-GENERAL that there was no alteration of the substantive law.

He would freely admit that he had an object in view in the future. In case the decisions given under these rules came thereafter to be duly appreciated,

His Honor the President

and were found to allay any irritation that might exist, then they might form the groundwork of future legislation, which legislation, he thought, would be about the most important for Bengal that could be well imagined.

The HON'BLE BABOO KRISTODAS PAL said there was one point in the remarks of the hon'ble member opposite (Mr. Bell) which he thought ought not to pass unnoticed. It appeared that the hon'ble member took exception to the rules proposed by the learned Advocate-General, because they had a tendency, as he thought, to affect the substantive law. Now, as had been very clearly and forcibly pointed out by the hon'ble and learned Advocate-General, where the Collector found it difficult to work out the rule of proportion, he would be left absolutely to his own judgment in coming to a decision as to what was a fair and equitable rate of rent. The question was whether it was preferable to rely on the sole and unaided judgment of the Collector, or to lay down some definite rules to assist the Collector in arriving at his judgment. BABOO KRISTODAS PAL thought, with all deference to the hon'ble member, that if the Bill was passed in the form in which it stood, leaving everything practically to the discretion of the Collector, it would tend much more to foment disputes than the rules proposed by the Advocate-General were likely to do. The moment it was known in the mofussil that any number of ryots could petition the Lieutenant-Governor on the allegation that they were oppressed by the extortionate demands of zemindars—and any mookhtiar could work upon the imagination of the ryots and set up a "kingdom" or "raj," as was done in Pubna—they would flood the Collector with petitions for the enforcement of the law; and if the Collector were disposed to favor their views, BABOO KRISTODAS PAL would not be surprised if the ryots should go in *en masse* and avail themselves of this law to get a summary settlement of their rents. If the Collector were a pro-ryot collector, he would favor the ryots; but if he were a pro-zemindar Collector, he would favor the zemindar. The mischief of discretionary government of this kind was thus apparent. It would be far better not to pass any law on the subject than to pass one which would tempt the executive to favor the one class or the other according to their personal sympathies or antipathies. He would therefore strongly advocate the introduction of the proposed rules.

The HON'BLE MR. DAMPIER observed that the discussion had now got to the point as to whether, by introducing these rules, they would be changing the substantive law or not. The question was thoroughly discussed in committee. One party held that the words "fair and equitable" had a construction put upon them by the High Court. That construction was the law of the land, and if this Council should attempt to put any other construction which it considered that the law itself would bear—if this Council attempted to put by its legislation any other construction than what the High Court had put upon those words, then the Council would be altering the substantive law of the land.

The HON'BLE BABOO KRISTODAS PAL said the object of the Bill was to prevent disputes. How was that to be done? Practically, if the Collector was to act according to the principles laid down in Act X of 1859, then he must be

guided by the rule of proportion laid down by the High Court, and if that rule was unworkable, he would be as helpless as the Munsif now was. He must decide according to what was "fair and equitable," and therefore would have to use his own discretion. It was true that the Bill provided an appeal to the Commissioner of the division; but the Commissioner would also have to exercise his own discretion, and we should then have the discretion of one officer pitted against the discretion of another. There would be no law for the guidance of either. It was this absence of law that led to the state of things for which this Bill was intended to apply a remedy.

His Honor the President said that was an admitted evil. The object of the Bill was limited: it did not propose to go such lengths as to provide a rule where there was none. Disputes of this nature could be better decided by the Collector than by the Commissioner. It would not be very creditable to the Collectors if they could not settle these things better than the Civil Court. Hon'ble members knew that they had settled them in the Dacca district; and in the Pubna district exactly the same thing would have happened if precautionary measures had not been taken. Therefore experience showed that the transfer of the jurisdiction in cases of this sort was beneficial.

The Hon'ble Mr. Dampier observed that there was a very material difference made in the Bill in Select Committee. As the Bill stood before, the Lieutenant-Governor was to state the "matters" to be decided by the Board after a general enquiry. The majority of the Select Committee had inserted the words "of fact" after the word "matters." That made a very wide difference in the intention of the Bill as introduced by the mover; because the original intention was that the Board should lay down general instructions for the guidance of the Collector in the settlement of these suits, whereas now the Collectors would have to arrive at a finding at their own discretion.

The Hon'ble Baboo Kristodas Pal said he was quite aware of the change. Under the Bill as introduced, the Board of Revenue was empowered to lay down any principles they might think fit; now, they would be restricted to the finding of facts. So the discretion of the Collector was absolute with regard to the application of principles, with the exception of course of an appeal to the Commissioner, which was also allowed by the original Bill. Therefore the alteration made by the Select Committee made the Bill more objectionable than it was before.

The Hon'ble the Advocate-General observed—Suppose the Collector said, "I find that the rule laid down in Thakoorance Dossee's case is unworkable, because I cannot find what was the value of the produce at the time the rate of rent was fixed; therefore I will follow one or other of these principles." Would it be said that he did not follow a good rule, if he followed one of the rules which were proposed to be laid down in the Bill? That was all the Advocate-General desired, namely, that there should be laid down certain principles for the assistance of the Collector in arriving at what was "fair and equitable." He was pretty clear in his own mind that if some such rules were not laid down the Bill would be useless. If the Government thought that a simple transfer of jurisdiction would be sufficient, he had nothing to say against such transfer. But when it

was seen how utterly impossible it was in some cases to apportion the increased produce between the zemindar and the ryot, he doubted very much whether a mere transfer of jurisdiction was enough. Could it be expected that a sick person would be healed merely by calling in a new doctor? what was required was a new doctor with new appliances.

His Honor the President said it was true that the proposal was to call in a new doctor (the Collector) without any new appliances, except such as he possessed from his position as a revenue officer. But the one doctor was better than the other, as every zemindar knew and as was proved by what had happened in the Eastern districts.

His Honor the President said he should like, if he could, to insert some such rules as those proposed by the learned Advocate-General. They seemed to him not to go very far, and they were perfectly harmless: they could do no harm, and they might do good. They were worded with the hon'ble gentleman's usual skill and carefulness, combined with the knowledge and practical experience of the hon'ble mover. First the rules said that the Collector should fix the rate of rent upon a certain principle, which was the very principle which had been affirmed by the High Court as to the rule of proportion. But suppose the Collector was unable to determine the rent by the rule of proportion, then he might (not omit it) but go by one of the three rules here proposed. Rule (*a*) was a very harmless one. It provided that the rent should represent such portion of the gross produce of the land as should be considered "fair and equitable." The rule was not very definite, but it was perfectly harmless. Then rule (*b*) provided that the rent should represent such portion of the net profits of the land as should be "fair and equitable." That also was a very harmless rule. Rule (*c*) was no doubt very important. It provided that the Collector should take as the standard of comparison the rates obtained by competition, and adjust the rent by taking such proportion of such competition rates as he should consider "fair and equitable." That was the practice in other parts of India, where these things were more particularly considered. The rules appeared to His Honor to be good rules, but there was this objection to them, that they might cause apprehension to arise that a change in the substantive law was being made: whereas the real object of the Act was a mere transfer of jurisdiction; and secondly, perhaps the majority of the Council would not agree to these rules being inserted in the Bill.

The question of trying to alter the substantive law was under separate consideration. His Honor derived encouragement in pressing on the matter from what he had heard from the learned Advocate-General, and if the Government succeeded in their endeavors, it would be one of the greatest boons which could be conferred upon the inhabitants of these provinces. He was not without hope of being able to frame some Bill, which he should submit separately for the consideration of the Council. But it was an objection to put in what he might call a jurisdiction Bill any rules of this description. Nevertheless, looking at the uncertainty of their being able to pass a larger law of that kind, he was personally in favor of these rules being introduced. But if these rules

could not properly be inserted in the Bill, he was willing not to have the rules and to pass the Bill without them, as it would enable the Government to do by law what had been done in the Dacca district without law. They had done the thing to the satisfaction of both parties in Dacca; but in an old established province like Bengal they could not answer for being able to succeed again. That was an argument for passing this Bill, which provided for nothing more than a mere transfer of jurisdiction. Therefore, if the Council were in favor of accepting these rules, he should be glad; but if they did not approve of the rules being included in the Bill, he should be content to see the Bill pass without them.

The HON'BLE MR. REYNOLDS said, as a member of the Select Committee on this Bill, he felt it his duty to say that he thought there were very strong objections to these proposed rules. They would have the effect of giving rise to serious apprehensions amongst the ryots that the law was being altered to their disadvantage, and he thought, with all deference to the hon'ble and learned Advocate-General, that they did to some extent alter the substantive law. It was true that the first clause declared that the Collector was to fix the rate of rent according to the rule of proportion laid down by the High Court; but the working of the rule of proportion was limited by the latter part of the clause to a period of five or ten years before the date of the institution of the suit. That MR. REYNOLDS believed was an entirely new provision.

Then it appeared to him that the tendency of these sections would be that the Collector would not fix his mind so entirely to the necessity of working out the rule of proportion. They gave him not exactly an alternative procedure, but one which was much easier to follow than working out the rule prescribed by the High Court. He feared that, under the temptation of these rules, some Collectors might be induced to say, more readily than they ought to do, that they could not apply the rule of proportion, and might therefore proceed to fix a "fair and equitable" rate of rent according to their own judgment of what was fair and equitable. He thought that such a result was very undesirable. It appeared to him that if they passed the Bill as it stood, the rule of proportion would have to be applied; and it seemed to him that the tribunals established under this Bill would have much better opportunities of applying that rule than the Civil Courts. Therefore he thought the Council ought to allow the tribunals established under this Bill to see whether they could not work out the rule of proportion, while the Government were considering how far they could work out an amendment of the law in a separate measure.

HIS HONOR THE PRESIDENT said he for one did not believe that these rules would make any change in the substantive law. He believed it was perfectly within the competency of the Council to pass the Bill with these rules, and he was sure that if they could do so they would do a great deal of good. But whether they could do so he felt doubtful on account of the differences in the country. He greatly regretted the difficulty he feared would arise. He however felt bound to say, in justice to the hon'ble and learned Advocate-General, that every one of these rules would so far conduce to peace and quietness in the country.

But still, if the Council could not pass them, he was quite willing to do without them. He would rather take the Bill without these rules, than risk its safety by inserting them, if there was no prospect of the Bill being so passed. He had to look of course not only to what his own opinion might be, but what he thought might be the opinion of the country generally, and of the authorities into whose hands the Bill might fall.

The HON'BLE BABOO JUGGADANUND MOOKERJEE said it appeared to him to be of doubtful propriety to insert in the Bill any rules such as these. The rule of proportion as laid down by the High Court in Thakoorance Dossee's case was found not to be workable, and could not be worked by the Civil Court, and the present attempt was to see whether the Collector would be able to work it out. He would be in a better position to do so than the Civil Court; he would be able to visit the place personally, and he would have more opportunity of settling disputes by his personal influence. The Civil Court, on the other hand, was only expected to send an amin to the spot, to find out how the rule of proportion should be worked, and the Court must rely upon the report made by the amin.

There was another reason why it appeared to BABOO JUGGADANUND MOOKERJEE objectionable to embody any rules in the Bill. It was provided that if the Collector failed to apply the present rule of proportion he might fall back upon one or other of these rules. That, he thought, would open a door to the litigant parties to dispute the Collector's judgment upon other points before the Commissioner in appeal. Therefore upon these grounds it appeared to him that it was not the province of the legislature to lay down any indefinite rules for the guidance of the Collector.

The question was then put that the following section be inserted in the Bill after section 14:—

The Council divided—

Ayes 6.	*Noes* 4.
THE HON'BLE NAWAB SYED ASHGAR ALI.	THE HON'BLE BABOO JUGGADANUND MOOKERJEE.
" " BABOO KRISTODAS PAL.	" " MR. BELL.
" " MR. BROOKES.	" " " REYNOLDS.
" " BABOO RAMSHUNKER SEN.	" " SIR STUART HOGG.
" " MR. DAMPIER.	
" " THE ADVOCATE-GENERAL.	

The motion was therefore carried.

Sections 4 to 29, as well as sections 1 and 2 and the preamble and title, were severally agreed to

The Council was adjourned to Thursday, the 30th instant, at 3 P.M.

Saturday, the 30th March 1876.

Present:

The Hon'ble G. C. PAUL, *Acting Advocate-General, presiding,*
The Hon'ble H. L. DAMPIER,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

PARTITION OF ESTATES.

The HON'BLE MR. DAMPIER moved that the report of the Select Committee on the Bill to make better provision for the partition of estates paying revenue to Government in the lower provinces of the Presidency of Fort William in Bengal be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

Sections 5 and 6 were agreed to.

On the motion of the HON'BLE MR. DAMPIER, the following amendments were made in section 7:—

In paragraph 3, last line, for "shall be deemed to be the rental of the land, was substituted "may, if the Collector think proper, be deemed, &c."

In paragraph 5, line 5 of the same section, after "estate" was substituted "subject only to the payment of a fixed amount of rent."

Sections 8 to 10 were agreed to.

In section 11, lines 3 to 6, on the motion of the HON'BLE MR. DAMPIER, the following amendment was made:—

For the words "no partition of an estate shall be made if the result of such partition would be to form any separate estate," were substituted "if the application shall have been admitted, no partition shall be carried out in accordance with such application if the separate estate of the applicant for such partition would be."

Sections 12 to 36 were agreed to.

A verbal amendment was made in section 37.

Sections 38 to 46 were agreed to.

Section 47 provided for the formation of an Estates' Partition Fund, and declared what costs should be chargeable to such fund. Clause (c) of the section was as follows:—

"(c) the pay and allowances of any Deputy Collector who is employed exclusively in making partitions in the district, or such proportion as the Collector may think proper of the pay and allowances of any Deputy Collector who is partly employed in making such partitions."

The HON'BLE BABOO KRISTODAS PAL moved the omission of this clause. Under the existing law the pay and allowances of Deputy Collectors employed in making partition were not charged to the proprietors. And the reason was obvious. There were many administrative acts performed by the Government for the benefit of different classes of the community. Inasmuch as the Government was the guardian of the public, it was bound to perform certain duties for the benefit of the public. Surveys were undertaken for the benefit of the community, but the Government did not charge the cost of surveys to the landowners. In the same way, in the management of wards' estates, the Collector, the Commissioner of the division, the Board of Revenue, all attended to the affairs of such estates, but no such charge was made to the proprietors. He did not see why any difference should be made in the case of butwarah proceedings. It was reasonable and just that all establishments entertained for butwarah proceedings should be paid by the proprietors interested—the ameens, the chainmen, peons, and other subordinate establishment. But the Deputy Collector formed a link of the great chain of administration, and BABOO KRISTODAS PAL saw no reason why the Deputy Collector's services should be charged to the estates for superintending the work of partition. One great object of the Bill was to lessen the cost of butwarah proceedings. The Council was doubtless well aware that the great expensiveness of butwarahs was one of the chief obstacles in its way. But the charge proposed to be thrown on the estates on account of the pay and allowances of the Deputy Collector would be a serious charge; and as butwarah proceedings hung on for years, and although this Bill simplified the proceedings, still it would take many years to complete a partition, this charge would consequently amount to a very large sum. He would therefore move that, in accordance with the existing law, this clause be omitted, and that no charge be made to the estates on account of the pay and allowances of the Deputy Collector.

The HON'BLE MR. DAMPIER said this was almost the only important point on which the Select Committee did not come to an unanimous conclusion. It was first proposed that a portion of the Deputy Collector's salary should form a charge of the partition costs leviable from the proprietors in every instance; that was to say, if the Deputy Collector was engaged once a month in any butwarah proceeding, still some small portion of the Collector's pay should be charged as costs of the proceedings. Subsequently, after a good deal of discussion, the Committee adopted a sort of compromise, and it ended as was seen in the Bill. It would be observed that by section 42, in all ordinary sporadic cases of butwarah, this item of the pay of the Deputy Collector was not included, as it was proposed under section 47 to do in cases where the whole or any great portion of the Deputy Collector's time was given up. Then we came to section 43, which provided for the formation of an Estates' Partition Fund: instead of providing that the cost of each butwarah should be settled by itself, and paid by itself, section 43 provided that notwithstanding anything contained in the six last preceding sections, the Lieutenant-Governor may direct that in any district a fund to be called the "Estates' Partition Fund" should be formed. There were some districts, Tirhoot and Cuttack

for instance, in which butwarahs were extremely numerous, and were sufficient fully to occupy the time of one Deputy Collector. Where butwarahs were so systematically made, and on such a large scale as to require the attention of a special Deputy Collector, a partition fund would be formed to which all receipts should be credited, and out of which all establishments and other expenditure should be paid. In the section to which an amendment was now proposed were given the items of cost which should be chargeable out of this estates' partition fund, *i.e.*, should be chargeable to proprietors where partitions were numerous enough to make it worth while to make a joint stock concern of the funds; and to have a regular establishment for the purpose, instead of its being appointed ticca for each particular case as it arose. The majority of the Committee thought that where butwarahs were effected in such large numbers, it would be quite fair that the pay of the Deputy Collector should be charged, inasmuch as his services were immediately and solely devoted to the benefit of the proprietors of estates and not for the general good of the country.

After some conversation the Council divided:—

Ayes 4.	*Noes* 4.
THE HON'BLE NAWAB SYED ASHGAR ALI.	THE HON'BLE MR. BELL.
" " BABOO KRISTODAS PAL.	" " MR. REYNOLDS.
" " BABOO RAMSHUNKER SEN.	" " MR. DAMPIER.
" " BABOO JUGGADANUND MOOKERJEE.	" " THE PRESIDENT.

The numbers being equal, the President gave his casting vote with the Noes.

So the motion was negatived, and the section was agreed to.

Sections 48 to 82 were agreed to.

A verbal amendment was made in section 83.

Sections 84 to 89 were agreed to.

Section 90 ran as follows:—

"Whenever the dwelling-house of one proprietor, with the offices, building, and grounds immediately attached thereto, shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, as provided in section 87, the proprietor whose dwelling-house, offices, and buildings have been included as aforesaid, may apply to the Deputy Collector for permission to redeem the annual rent so fixed."

The HON'BLE MR. DAMPIER moved the addition to the section of the following words:—

"And the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, buildings, offices, and grounds have been included will be liable."

The necessity of this amendment had forced itself upon his conviction since the Select Committee had reported upon the Bill. The point was considered in committee, and he with others then thought this precaution would be

The Hon'ble Mr. Dampier.

necessary, but since then he had reason to think differently. When the dwelling-house of one proprietor by the process of butwarah was placed within the separate estate assigned to another proprietor, the Bill provided that the owner of the dwelling-house should hold the land occupied by it at the jumma to be fixed by the Deputy Collector in perpetuity. Then this section went on to say, not only should the proprietor have the benefit of holding the land on which the house stood at a fixed jumma, but he might convert it into a rent-free holding by redeeming the fixed rent assigned to it by the Deputy Collector by the payment of a capitalized sum, as in the section described. The question was whether this provision was sufficient for the protection of the interests of the Government. Take the case of a small estate broken up into four separate estates, A, B, C, D, each very small. It might happen that in the particular separate estate A a considerable portion of the area was occupied by the dwelling-house and yard and immediate premises of another proprietor, not the proprietor of estate A but of estate C In that case, on the land which was so occupied might be imposed a fixed jumma of say Rs. 5. It might so happen that the Government revenue of the whole separate estate A was only Rs. 8. Now, under the provisions of this Bill, C might redeem the rent of the land on which his dwelling-house was situated by a capitalized payment to the proprietor A,. so that the separate estate A would remain with assets of Rs. 3 only out of which to meet a sudder jumma of Rs. 8; or in other words, the assets would be reduced to an amount below the amount for which proprietor A was liable. It could not be denied that this danger might exist. MR. DAMPIER thought it would be better to give the Deputy Collector authority to refuse to allow the rent to be redeemed on this ground, if he thought it necessary to do so.

The motion was agreed to.

A similar amendment was, on the motion of the HON'BLE MR. DAMPIER, made in section 91.

Sections 92 to 103 were agreed to.

Section 104 provided that lands held rent-free were not to be divided, but might be left appertaining jointly to all the separate estates which were formed out of the parent estate.

On the motion of the HON'BLE MR. DAMPIER the following words were added to the section :—

"Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the proprietors of the parent estate, but not otherwise."

Section 105 provided :—

"Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patni or other permanent intermediate tenure created by all the proprietors of the parent estate or their predecessors, the Deputy Collector may either—

(1) Assign lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in exception two or in exception three (as the case may be) of section 7; or

(2) Leave such lands unassigned to any separate estate, and specify in the partition papers and proceedings that the lands are left appertaining jointly to all the separate estates in the proportion which each separate estate bears to the parent estate."

The HON'BLE MR. DAMPIER said the question had been raised by Mr. Money of a case where nine out of ten proprietors admitted that the tenure was created by all the proprietors of the estate, and the tenth proprietor denied that it was so created. No procedure was provided by which the Deputy Collector should ascertain the facts of the case. To get over this difficulty, MR. DAMPIER proposed the substitution of the words "falling within exception 2 or exception 3 of section 7" for the words "created by all the proprietors of the parent estate or their predecessors" in line 5 of this section.

The HON'BLE BABOO KRISTODAS PAL submitted that the point raised by Mr. Money in connection with this section was not satisfactorily answered. Mr. Money raised the question of what was to be the procedure where nine proprietors admitted the creation of the tenure and the tenth did not. Was the Collector to reject the tenure because one proprietor out of ten did not acknowledge its reality; or was he to accept the acknowledgment of the nine proprietors and reject the objection raised by the tenth?

The HON'BLE MR. DAMPIER said he was decidedly of opinion that where a tenure was acknowledged by nine proprietors to have been created and to be valid against all the proprietors, and its creation and validity was denied by the tenth, the Collector should not recognize the tenure, but should divide the lands of such tenure between the different estates created by such partition. After all the only difference would be that the Collector would, on the papers, divide the ryottee rental of the lands, instead of the tenure-holder's rental, among the different separate estates. Rights would not be affected.

After some conversation the motion was agreed to.

Sections 106 to 109 were agreed to.

Section 110 was passed after an unimportant amendment.

Sections 111 to 137 were agreed to.

On the motion of the Hon'ble Baboo Ramshunker Sen a clause was inserted in section 138, giving an appeal from the decision of the Deputy Collector to the Collector, when fixing the rent to be paid under section 87 by one proprietor for the land and dwelling-house belonging to him but situate in the separate estate allotted to another proprietor. And a clause was inserted in section 139, giving a similar appeal from the decision of the Collector to the Commissioner.

The remaining sections of the Bill, with the schedule and the preamble and title, were agreed to.

The Council was adjourned to Saturday, the 1st April.

Saturday, the 1st April 1876.

Present:

The Hon'ble G. C. PAUL, *Acting Advocate-General, presiding.*
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO JUGGADANUND MOOKERJEE, RAI BAHADOOR,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
and
The Hon'ble MOULVY MEER MAHOMED ALI.

MOFUSSIL MUNICIPALITIES.

ON the motion of the HON'BLE MR. DAMPIER the Council proceeded to the further consideration of the Bill to amend and consolidate the law relating to Municipalities.

The HON'BLE MR. DAMPIER said, since the last meeting of the Council the Chairman of the Justices had suggested to him the propriety of inserting in the Bill certain sections taken from the Calcutta Municipal Bill to provide for the more efficient registration of deaths. It was considered that these sections would be found useful in such municipalities as the suburbs of Calcutta, Howrah, Dacca, Patna, and Moorshedabad, and they would be made applicable only to such municipalities as required their introduction. He therefore moved the insertion of the following sections after section 279:—

"279*a*.—The Lieutenant Governor may require the Commissioners of any municipality to appoint and maintain at each burning ghât and native burial-ground a sub-registrar for the registration of all corpses brought to such burning ghât or burial-ground for cremation or interment.

279*b*.—Whenever a sub-registrar shall have been appointed for any burning ghât or burial-ground under the last preceding section, information of the particulars required by section 8 of the said Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning ghât or burial-ground for cremation or interment to such sub-registrar, and information so given shall be deemed to be information given to the registrar of the district as required by the said section.

279*c*.—Whenever a death shall occur in any hospital within the limits of any municipality in respect of which the Lieutenant-Governor has directed that all deaths shall be registered under the said Bengal Act IV of 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Lieutenant-Governor may prescribe; and in such case no other person shall be required to give information of such death to a registrar or sub-registrar under this Act.

279*d*.—Within the limits of any municipality in respect of which the Lieutenant-Governor has directed that all deaths shall be registered under the said Bengal Act IV of 1873, it shall not be lawful for any sexton, keeper of a cemetery, burial-ground, or burning

ghât to bury, burn, or allow to be buried or burnt any corpse, unless the said corpse is accompanied by a certificate of the death in such form as the Lieutenant-Governor may direct, and signed by the registrar of the district, or by the sub-registrar appointed under section 279*b*, or by a medical officer.

279*e*.—Whoever buries, burns, or allows to be buried or burnt a corpse without the certificate mentioned in the last preceding section, shall be liable to a fine not exceeding one hundred rupees."

The HON'BLE BABOO KRISTODAS PAL said he entirely concurred with the hon'ble mover as to the necessity of making arrangements for the registration of deaths in first class municipalities. These sections appeared to be copied from the Calcutta Bill, but he thought sections (*d*) and (*e*) might well be omitted without in any way impairing the efficiency of arrangements for registration. Section (*d*) required that no corpse should be buried or burnt without a certificate, and section (*e*) prescribed the penalty for not complying with that provision. It was well known that in the mofussil the persons likely to be employed as registrars would be persons generally on small pay, and he was afraid that this power might be converted into a source of extortion. Sections (*d*) and (*e*) were in his opinion not absolutely necessary, and he would therefore suggest their omission. The state of things in Calcutta was different. Here people were well able to protect themselves, and public opinion was also strong. He could not too strongly urge that those two sections were superfluous so far as the mofussil was concerned, and might be converted into an engine of extortion.

The HON'BLE SIR STUART HOGG observed that he was unable to follow the argument of the hon'ble member. He was unable to see why the requiring of a certificate should in any way facilitate the exaction of illegal fees from the friends of the deceased. There must be always at each burning ghât a person to look after it, and he did not see why the mere fact of a corpse being accompanied by a certificate should in any way facilitate extortion.

The HON'BLE BABOO JUGGADANUND MOOKERJEE concurred with the hon'ble mover of the amendment that to require a certificate would not only be a hardship upon the poor, but lead to extortion. In the interior of the mofussil there were no burning ghâts in the sense in which the term was known; it was only where the Ganges ran that burning ghâts existed. To require a certificate would be a great hardship, because in the mofussil very few people were in a position to call in the aid of a medical man professionally, and when they did do so, the medical man generally left before death ensued. He therefore thought that these sections (*d*) and (*e*) would not only act as a hardship, but would be an instrument in the hands of registrars and others of extortion upon the poor.

The HON'BLE BABOO RAMSHUNKER SEN instanced the burning ghâts at Chogdah, Santipore, and Dacca, and in order to meet the objection raised as to abuse of authority, he would suggest the addition of a penal section to the effect that any sub-registrar who received any gratification or fee, or who failed to register a death, should be fined.

The HON'BLE BABOO KRISTODAS PAL said the gist of his objection had not been fully understood by the hon'ble member on his right (Sir Stuart Hogg). It was true that these sections would not be absolutely extended to all munici-

palities, but only to those which were so far advanced as to admit of the registration of deaths. But what he wished to impress upon the Council was that the persons likely to be appointed sub-registrars would generally be appointed upon small pay, and might convert their power into a source of extortion; they might charge persons with suspicious deaths, and so forth, and thus put people to no end of annoyance at a time when their feelings ought to be scrupulously respected. This was most likely to happen, knowing as we did that in the mofussil little men dressed in brief authority were but too apt to turn their authority into a source of gain. He thought the legislature ought to hesitate before they multiplied opportunities for gain for such persons.

The HON'BLE MR. DAMPIER observed that after what had been said it appeared to him that the two sections which had been objected to would be so excessively unpopular that he would consent to withdraw them.

The HON'BLE SIR STUART HOGG said that he was entirely opposed to the withdrawal of these sections. It was well known that people were opposed to the registration of deaths, and it seemed to him very necessary that some steps should be taken to compel them to do so; they might either go to the sub-registrar for registering deaths, or the deaths might be registered at the spot where the corpse was to be interred or burnt, and he would make it incumbent on municipalities to keep up these sub-registrars. Surely it was not too much to ask the friends of a deceased person to go to the sub-registrar to register the death, and obtain a certificate that the registration had been duly effected; they could then produce the certificate, show it to the officer in charge of the burial-ground or burning ghât, and bury or burn the corpse as the case might be. He thought that no hardship was likely to arise from passing these sections, and he was therefore entirely opposed to their being omitted. The same law existed in Calcutta, and as the matter was very important, he thought the law in the suburbs should be the same: it was not proposed to extend these sections throughout Bengal, but only to such places as the Lieutenant-Governor might think fit.

The HON'BLE BABOO KRISTODAS PAL said there was already a general law for the registration of births and deaths applicable to the whole of Bengal—Act IV of 1873 of this Council. All that he gathered from the hon'ble mover was, that certain facilities should be given in some of the mofussil municipalities for the registration of deaths: these would consist in the employment of sub-registrars at burial-grounds and burning ghâts. He did not know whether there were many first class municipalities which were in a position to employ sub-registrars at different places; for if sub-registrars were appointed at the rate of even ten rupees a month, the establishment would swallow up some five hundred rupees, which few first class municipalities could afford to pay. He therefore thought it would not be desirable to introduce these sections, except in the most wealthy municipalities. But wherever Act IV of 1873 might be in force, it appeared to him that it was not necessary to impose additional obligations, such as the production of a certificate, on persons who might carry a corpse to be buried or burnt. The inconvenience, annoyance, and harassment which might be caused by the sub-registrars in regard to the granting of

certificates had been acknowledged by the hon'ble mover of the Bill, and he hoped therefore that sections (*d*) and (*e*) would be omitted.

After some further remarks sections 279*d* and 279*e* were withdrawn, and 279*a*, 279*b*, and 279*c*, were agreed to, with the addition to section 279*b* of the words—"Section 9 of Bengal Act IV of 1873 shall be applicable to every sub-registrar appointed under this Act."

PARTITION OF ESTATES.

On the motion of the Hon'ble Mr. Dampier the Bill to make better provision for the partition of estates was further considered in order to the settlement of its clauses.

Section 48 provided that the civil court might order the parties to pay expenses incurred in dividing an estate.

On the motion of the Hon'ble Mr. Dampier the following words were added to the section:—

"and the Collector shall levy the expenses and fees from the parties in the proportion ordered by the civil court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector."

On the motion of the Hon'ble Mr. Dampier the following sections were substituted for section 113; and sections 112, 113, 113*a*, and 113*b*, were transposed so as to come immediately after section 94:—

"113.—When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

"and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

"and may cause lots to be drawn in like manner as often as he shall think proper for such purpose.

"And after lots shall have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

"Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance their objections in respect of the papers accepted as the basis of the partition and of the assets of the different lands as stated in such papers, and until such objections which may have been made shall have been disposed of.

"*Section* 113*a*.—The Deputy Collector may, by a notice served as prescribed in section 131, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding sections, to attend at the office of the Deputy Collector in person or by authorized agent at a time to be fixed by the Deputy Collector for the purpose of drawing lots;

"and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent duly authorized to draw lots on their joint behalf; and if at the time fixed for drawing such lots such proprietors have failed to agree to any such joint appointment, and shall fail

to cause the attendance of an agent so authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Collector's requisition.

"113*b*.—Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector as made under the last preceding section, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor, or on the joint behalf of such proprietors who shall have so failed."

On the motion of the HON'BLE MR. DAMPIER the following clause was introduced after clause (*d*) of section 138:—

"(*d*1) fixing under section 87 the limits of land, or the rents to be paid for land."

And the following clause was introduced after clause (*f*) of section 139:—

"(*f* 1) fixing under section 87 the limits of land, or the rents to be paid for land."

The HON'BLE BABOO RAMSHUNKER SEN moved the introduction of the following section after section 145:—

"*Section* 145*a*.—The provisions of this Act may also, so far as they are applicable, be applied under orders of the Board or of a court of competent jurisdiction, to the partition of any landed property comprised in any tenure or holding of a permanent and transferable nature held directly under Government and subject to the payment of a fixed amount of rent.

"Provided that if the result of such partition would be to form separate holdings, whereby the area of each is reduced below five kátás, no application for such partition shall be entertained until all the holders thereof agree to redeem the amount of Government revenue for which each separate holding would be liable, by the payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of the Government estate within which the tenure or holding is situated."

After some conversation it was agreed that section 145 of the Bill should be omitted, and the Hon'ble Baboo Ramshunker Sen's motion was by leave withdrawn.

Section 104 provided as follows:—

"Wherever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall make a division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate."

The HON'BLE BABOO KRISTODAS PAL moved the substitution of the word "a" for "no" before the words "division or assignment;" and the omission of all the words from the words "but shall specify" to the end of the section.

After some conversation the motion was put and negatived.

REGISTRATION OF ESTATES.

THE HON'BLE MR. DAMPIER moved that the further Report of the Select Committee on the Bill to provide for the registration of revenue-paying estates and revenue-free lands, which was presented to the Council at the last meeting, be taken into consideration in order to the settlement of the clauses of the Bill. He said the Committee had consulted several officers, most of whom were strongly of opinion that the Collector, instead of the civil court, should be allowed to decide questions of disputed succession. The Committee had there-

fore provided that the Collector might either himself decide the question of right to possession after summary inquiry, or might refer the question for summary decision by the civil court, if he considered that the dispute might more properly be so determined. If he found that only vexatious or frivolous objections were taken, he would probably decide the question himself. But if the right to succession depended upon an intricate title, the Collector would no doubt refer the question for the decision of the civil court.

Then the Bill provided that a proprietor who did not apply for registration within the time prescribed should be punished. Now, by section 65, which was an expediency section, the Committee had provided that although the proprietor incurred the penalty by not applying within the prescribed time, the penalty should not be enforced if he came in of his own motion even after the prescribed time, but before the Collector began to take action against him to enforce registration. That would hold out an inducement to proprietors to come in for registration even after the time fixed.

Then the Committee had introduced a new Part V, which made some amendments in the provisions of Act XI of 1859, as to the opening of separate accounts of land revenue for shares of estates. These amendments were made to meet a difficulty which had suggested itself in connection with the Bill for the partition of estates. Under the registration sections of Act XI of 1859, a person holding a share of an estate might require a separate account of his share to be kept, and if the estate fell into arrears, his share would not be liable to sale unless the sale of the other shares failed to cover the amount of such arrears. But when once a separate account had been opened there was no provision for ever closing it. If four shareholders, each of a four-annas share in an estate, all applied for the opening of separate accounts, the accounts would be opened for each; but if subsequently these shares became broken up and re-amalgamated, so that the estate consisted, say, of one nine-annas and one seven-annas share, the separate accounts for the four four-annas shares must remain on the register, although this distribution no longer represented the existing distribution of the proprietors' interest.

As Act XI of 1859 stood, there was no power to close such an account when once opened. The Committee had therefore provided how an account might be closed and new accounts might be opened to represent a re-arranged distribution of the interests in an estate.

Then, in section 71, the Committee had taken the opportunity of legalizing a practice which had been followed by Collectors under Act XI of 1859, but which was not authorized by that law, and which might lead to legal difficulties. Under section 10 of Act XI of 1859, a proprietor who was a joint-sharer in common tenancy over the whole estate might have a separate account opened, and under section 11 a proprietor who was the entire owner of specific lands might have an account opened. But a man who was neither the owner of a fractional undivided share over the whole estate, nor the entire owner of specific lands of any part of an estate, but who was the owner of an undivided fractional share only in certain specific lands, (and not extending over the whole estate,) could not have a separate account opened under Act XI of 1859

The Hon'ble Mr. Dampier.

Section 71 of this Bill made provision for opening separate accounts in respect of such composite interests.

Then, in sections 73–75 the Committee had provided that the Collector should furnish an extract from the register showing how the registered interests stood on any particular date, and that whenever any change was made in the registers in the names of the proprietors or managers of an estate, or in the extent of their interest, the Collector should give the greatest publicity to such change throughout the estate. The object of these provisions was in connection with sections 76 and 77, which were very important sections. They gave indemnity to a person who paid rent to a joint proprietor holding in common tenancy in proportion to the extent of interest in respect of which such proprietor was registered, and relieved the tenant from liability to pay rent to any proprietor in excess of such proportion; and as a necessary adjunct to the above, the Committee had re-introduced the provision that no person should be bound to pay rent to a proprietor who was required to cause his name to be registered under the Act, unless his name should have been so registered, or unless his application for registration was pending. When the Bill was originally referred to the Select Committee, there was a section in it that no person should be bound to pay rent to any proprietor who was not registered; the object then was to apply an additional impetus to induce proprietors to register. The Select Committee had, when they first reported the Bill to Council, omitted that provision as unnecessary. But they had now re-introduced it with quite a different object. It was now introduced as a complement to the section which gave the tenant indemnity for payments made in accordance with registered interests. If the Council retained this provision in the Bill, the other provision relieving the tenant from the obligation to pay to an unregistered proprietor was an unavoidable adjunct to it.

The Committee had provided that whenever any sum of money should be payable by the Collector to the proprietors of any estate or revenue-free property jointly, he might pay to any one or more registered proprietors thereof such portion of the sum payable as was in proportion to the extent of their registered interests, and the Bill gave the Collector an indemnity for payments so made, as in the case of tenants paying rent.

The Committee had also saved the conditions of written contracts, and had provided that the time required for obtaining copies of the orders complained against should be deducted in computing the time allowed for appeals under the Act.

The Hon'ble Mr. Reynolds moved the insertion of the following words at the end of section 1:—

"Provided that such clauses of this Act as require the registration of the extent of interest possessed by any proprietor shall not come into force in any district until they shall have been specially extended thereto by an order of the Lieutenant-Governor published in the *Calcutta Gazette*."

He said, when this measure came before the Council on the 12th February last, the Bill had been but a very short time, he thought only a few hours, in his hands, and he had therefore then deferred any remarks he might have to

offer upon the changes which had been made in the Bill during its passage through the Select Committee. He had wished to have further time for the consideration of those changes, and also to hear what might be said by the hon'ble mover in favor of them. Amongst the most important of these changes, as it seemed to him, was the introduction of a provision for the registration of the extent of interest of the proprietors of estates.

He need not remind the Council that this provision formed no part of the Bill as originally introduced and as referred to the Select Committee. It was altogether foreign to the scope and purpose of the Bill, and no mention of it was to be found in the Statement of Objects and Reasons drawn up by the hon'ble mover: in fact, he believed he was correct in saying that the hon'ble mover himself had originally been opposed to the introduction of these clauses into the Bill. They had been introduced into the Bill during its passage through Select Committee on the recommendation (he believed) of the hon'ble member opposite (Baboo Kristodas Pal), and had been since adopted and supported by the hon'ble mover.

MR. REYNOLDS was quite aware of the great importance and weight which must attach to the opinion of those members of the Select Committee who had signed the report, and he was also aware that the great majority of mofussil officers who had been consulted were in favor of these clauses. But it appeared to him, on the best consideration that he had been able to give to the subject, that these provisions were likely to do more harm than good; that the clauses for the registration of the extent of a proprietor's interest had better have been omitted; and that, if they were to be introduced, they ought to be introduced cautiously and gradually.

He must say at once that some of the objections made to these clauses appeared to him to be of no importance or weight at all. For instance, it had been objected that the effect of them would be to flood the revenue officers with work. He thought there was no force in this objection. District officers were put where they were in order that they might be flooded with work, and if it was for the public interests that the work should be done, the more district officers were flooded with it the better. In that case it was simply the province of the Executive Government to increase the number of officers, so as to enable them to keep pace with the work. His objection to these clauses was not that they would give revenue officers too much to do, but that they would employ them on work that had better not be done at all.

He wished to say a few words upon an argument which had been adduced in support of these clauses, and on which considerable stress had been laid by the hon'ble member opposite. It had been said that they would operate as a valuable protection to the ryot, by enabling him to know the extent of his landlord's share, and consequently the proportion of rent which he might justly be called upon to pay. A zemindar, it was urged, who was registered as the owner of a four annas share, would be able to screw six annas of the rent out of the ryots; and, in fact, the Bill, as it now stood, relieved the ryot from liability to pay rent in excess of the registered share of the landlord. But this idea of protection seemed to MR. REYNOLDS to be delusive. The ryot would not in one case out

The Hon'ble Mr. Reynolds.

of a hundred know anything about the entries in the register; and secondly, the great majority of ryots did not pay their rents to zemindars, but to intermediate tenure-holders or farmers. A register of zemindars' titles was a matter in which the ryot had very little interest.

This, however, was a merely negative objection; it might show that these clauses would not produce some of the benefits which were expected from them, but it would not show that they would do any real harm. Coming now to what he considered to be the real objections to these clauses, he would remark that the question was really *res judicata*. The memorandum which Sir Barnes Peacock had recorded in 1852 regarding the Bill of that year applied in all its breadth and strength to these clauses of the measure now before the Council. He should only weaken the argument of that eminent jurist if he attempted to lay it before them in any other language than the author's own. Sir Barnes Peacock wrote as follows:—

"If it is intended that any reliance shall be placed on the register by persons about to purchase land or to lend money upon the security thereof, I think it will be worse than useless, as it will frequently record persons to be the owners of rights which do not belong to them, and may thus be made an instrument of fraud."

Sir Barnes Peacock then went on to argue very clearly and forcibly on the impossibility of entrusting the Collector with the power of adjudicating on the question of right, and the uselessness of allowing him merely to determine possession without reference to title, and he finally summed up the case thus:—

"Should the Most Noble the Governor-General and my hon'ble colleagues concur with me in the view I have taken of the proposed Act, I think the Sudder Board had better be informed thereof, and probably it would be advisable to call their attention to the above remarks, and request them to inform the Government in what respect they consider that such a register as that which would be produced by the proposed Act, affording no correct information as to the rights of parties, nor even as to the lawfulness of their possession, and affording no conclusive evidence even in a summary suit, could be of any real benefit for fiscal, judicial, or police purposes."

Mr. Reynolds was quite aware that he would be told that these criticisms were not applicable to the present Bill. It would be said that the Bill of 1852 was too ambitious in its aims. Its avowed intention was to enhance the value of landed property, to facilitate the raising of money on loans and mortgages, and to diminish litigation in respect of landed property; whereas the object of this Bill was of a different and far more limited character, and aimed at nothing more than the registration of possessory titles. The answer to that argument seemed to him very simple and easy. They had to look, not to the object which the legislature might avow, but to the character of the legislation itself. He had compared the Bill of 1852 with the Bill of 1876, and, so far as these clauses of the Bill were concerned, the only practical difference he found was, that the summary investigation into the question of possession which under the former Bill was to be made by the Collector, under the present Bill was to be made sometimes by the Collector and sometimes by the Civil Court. That was the whole difference between the two Bills as far as these clauses were concerned; and that being so, it seemed to him to be of little

use to say that the objects of the former Bill were distinctly repudiated, when the same measures to effect them were introduced now as were proposed then. This seemed to him to be keeping the word of promise to the ear and breaking it to the hope.

He thought it would be admitted that if it could be shown that the results which Sir Barnes Peacock anticipated from the legislation of 1852 would follow from the present Bill, the consequences would be much to be deplored. It so happened that the Council were not without the means of judging how the Bill would be regarded in the mofussil, as this could be ascertained from a perusal of the opinions of the officers who had been consulted. Mr. Buckland, the Commissioner of Burdwan, in discussing the question whether the litigants ought to be called upon to bear the cost of the enquiry, wrote as follows :—

"It seems to me that the increased value given to land by the establishment of a clear record of title is amply sufficient to justify the compulsory registration of the extent of the interest of each proprietor at the cost of the disputants."

But Mr. Harrison, Collector of Midnapore, went a good deal further than this. He said :—

"The great advantage, it appears to me, of the registration of shares is the enhanced value of the property thus registered. At present estates sold for arrears of revenue fetch many times the value of estates sold for debt in the civil court, solely because the title is thereby secured. Registration of shares will not entirely remove defects of title, but it will go far to do so, and thereby enhance the value of landed property in the Lower Provinces by perhaps Rs. 100,000,000 ($2\frac{1}{2}$ times the present land revenue). To achieve such a result is worth some expenditure of time and trouble."

If the Council were to accept that very extravagant estimate—if they were to believe that the landholders of Bengal would be under the delusion that by registering their names and the extent of their interest under this Bill they would increase the value of their property to the amount of a hundred millions of rupees, it would be hardly too much to say that in passing these clauses of the Bill as they stood, this Council would be issuing notes to the value of a hundred millions of rupees, and that those notes would be forgeries.

He need hardly say that he entirely disclaimed the least intention of attributing to the hon'ble mover any desire to create or foster such a delusion as this.

But they had to look to the character of the persons for whom they were legislating. They were legislating not for men of exceptional wisdom and clear-sightedness, but for the average Bengal zemindar, the ordinary proprietor of land in these Lower Provinces. Had the Council any right to assume—had they even the slightest reason to suppose—that this average zemindar would be better able to comprehend the object and effect of these clauses of the Bill than such able and experienced officers as Mr. Buckland and Mr. Harrison? And if they must answer this question in the negative, how could they be justified in passing a provision the meaning of which was sure to be misunderstood?

Mr. Reynolds had spoken of Mr. Harrison's estimate as extravagant, and it appeared to him that it was extravagant in degree and quantity. But

The Hon'ble Mr. Reynolds.

he had no doubt that there was some substratum of truth at the bottom of it. He had no doubt that a zemindar who might register his name as owner of a four annas share would believe—and his neighbours, and friends, and enemies, and creditors, would believe too—that in some undefined way he had a better right to that share than he had before he registered it. His right, in fact, would be exactly the same as it was before.

MR. REYNOLDS' objections, therefore, to these clauses were three-fold. *First*, that they were foreign to the scope and purpose of the Bill; *secondly*, that they were sure to be misunderstood; *thirdly*, that if they were misunderstood, they could hardly fail to do a great deal of harm. He did not mean to say that such provisions as these would be bad always, and bad everywhere. The time might come when it would be possible to introduce them generally without danger; and even now there might be localities in which they might be introduced at once without any evil consequences. But he thought the Council would incur a very serious responsibility if it sanctioned the extension of these clauses at once to all parts of the country, before the Government had an opportunity of satisfying itself that there would be no misapprehension as to their real object and effect. He therefore hoped the Council would accept the amendment which he had moved.

The HON'BLE MR. BELL said, with regard to the first great objection which the hon'ble mover of the amendment had taken, that the nature of these clauses, regarding the registration of shares, was foreign to the scope of the whole Bill, he would reply that he could see no difference between the registration of entire interests and of fractional shares. If there would be a difficulty in ascertaining who was the proprietor of the one, there would equally be a difficulty in ascertaining who were the proprietors of the other. Even under the existing law, fractional shareholders were registered, and the only difference which the Bill would make would be to compel them to declare what the extent of their interests was. The Bill provided for determining the rights of parties where the fact of possession was disputed, and he thought the Council would be stopping far short of the requirements of the country if it only provided means for determining the fact of possession of entire estates and not of fractional shares as well.

The hon'ble member had referred to the Bill which had been condemned by Sir Barnes Peacock, but MR. BELL thought that any hon'ble member who had seen that Bill would agree with him that the whole scope and tenor of that Bill were opposed to the scope and object of the Bill now before the Council. But his principal answer to the arguments against the scheme of the Bill was that the people throughout the country were in favour of it. It was not only the officers of Government, but the zemindars as well were equally in favour of the measure; and such being the case, he thought the Council ought not to reject these sections on the purely theoretical ground that they were opposed to the scope of the Bill. For his own part he could not see how they were opposed to the scope of the Bill; and as both the zemindars and the officers of Government were in favour of the clauses, he thought the Council would be doing wrong to reject them.

Again, his hon'ble friend said that he saw no conceivable use in enforcing the registration of shares, and that, as far as the ryots were concerned, the protection which these sections was supposed to afford was absolutely delusive. Here, again, he could not agree with his hon'ble friend. The present system often led to great injustice being done to the ryot. A case came before him the other day, in which the ryots were paying seventeen annas to the rupee. It happened in this wise. Two shareholders were disputing about an anna share of the property, and each collected from the ryot the rent from this anna share, and the result was that the unfortunate ryots had to pay seventeen instead of sixteen annas to the rupee.

Then there were obvious advantages which would result to the country generally by this registration of shares. He would give one or two instances. It frequently happened that a joint proprietor not only paid what was due on his own share, but also the amount of arrears of the other shareholders. And the question was, how was he to realize the amount that he had paid in excess of his own share? In many cases it was perfectly impossible to say who were the shareholders, or what was the amount of their respective shares; but if these particulars were unknown, no suit for contribution would lie. A case came before him the other day in which he had advised a joint proprietor to give up the sum he had paid in excess of his own share of the revenue, rather than submit to the harassment and expense of asking the civil court to ascertain and apportion the amount of the respective liability of each particular shareholder of the estate. Now, if this Bill had been passed, all the shareholders would have been registered, and the shareholder who paid more than his share would have had no difficulty in recovering the amount from the other shareholders.

Another difficulty of frequent occurrence in the mofussil arose out of the sale of estates for arrears of revenue. It generally happened after the sale that a certain portion of the sale proceeds remained to be distributed, and this distribution was hardly ever accomplished without a suit in the civil court to determine the respective shares which each proprietor held. But if the provisions of this Bill became law, the Collector would be able to distribute the surplus sale proceeds without seeking the assistance of the civil court.

But his hon'ble friend next objected that if shares were registered the object and effect of registration would be misunderstood. But the Council were not responsible if they were misunderstood. MR. BELL by no means agreed with the distinguished Collector, whose opinion had been referred to, in thinking that the value of landed property throughout the country would be vastly increased by the passing of this Bill. But without attributing to the Bill virtues which it did not possess, he thought it would be a great advantage to the country that there should be some means of knowing who the responsible owners of landed property were. The mere fact of registration would not of course give a man a title. If a man purchased an estate, he would have to look beyond the fact of registration: but the fact of registration would be a guarantee that he had some sort of a title.

The Hon'ble Mr. Bell.

If a man could get his name on the register without opposition from his cosharers, it was *primâ facie* proof that he had at any rate some sort of a title, and was in possession. This question of the registration of shares he could assure the Council had been very carefully and very earnestly considered in Select Committee, and as both the officers of Government who had been consulted, and the landed interest as well, were in favour of it, he had given the proposition his unhesitating support in Committee, and he would ask the Council to do so now.

The HON'BLE BABOO KRISTODAS PAL said, as the original mover of this section for the registration of shares, he felt bound to say a few words in reply to the hon'ble mover of the amendment. He thought it was hardly consistent to condemn the registration of shares, and at the same time to move an amendment to the effect that the provisions of those sections should be extended at the discretion of the Lieutenant-Governor. If on principle the registration of shares were deemed objectionable, he thought the hon'ble member was inconsistent in holding that the objection would be removed by the exercise of the discretion of the Lieutenant-Governor. BABOO KRISTODAS PAL thought it would have been more intelligible if the hon'ble member had moved the omission of these sections altogether, instead of saying, as in effect he had said, that the registration would be altogether delusive, but that circumstances might arise when the Lieutenant-Governor might with advantage extend the scheme. So much for the principle on which the amendment was based.

Then the hon'ble member said that although the Collectors in the districts had almost to a man supported these sections, still they could not deny that they would lead to considerable increase of work, which would not be quite desirable. BABOO KRISTODAS PAL admitted that in a matter like this the hon'ble member was a better judge than himself. But when he balanced against the opinion of the hon'ble member the opinions of the district executive officers, *i.e.* the Collectors and Commissioners, who had reported on these sections, he must confess that when the majority of these officers did not apprehend much increase of work, but, on the contrary, warmly advocated the introduction of the new system, their opinion was certainly entitled to greater consideration.

[The HON'BLE MR. REYNOLDS explained that he distinctly disavowed this as a ground of objection].

The hon'ble member thought that the advantage which would accrue to ryots in the way of protecting their interests would be quite delusive; that although it was laid down in the Bill that no ryot should be bound to pay rent to any proprietor whose name and extent of interest had not been registered, or more than the amount indicated by his share, still it was a delusion. It might be a delusion; but no one could say that it would prove a delusion unless it had had a fair trial. BABOO KRISTODAS PAL thought that when once it had been notified to the ryots that the shares of the different proprietors in an estate were so much, they would take precious good care not to pay more than they were legally liable to pay. In fact, if we turned to the rather voluminous correspondence which had passed between the Government of Bengal and the different district officers about the evils of the separate management of joint estates, one evil which perhaps raised its head far higher than any other evil, he might say,

was the uncertainty about the respective shares of different proprietors. It was this uncertainty which led to great abuses—an evil of which the ryots complained so much.

Then the hon'ble member said that even if this advantage could be realized the ryots in most cases did not pay their rent to the zemindars direct, but to farmers, jotedars, and others. But surely in many cases the ryots did pay directly to the zemindars, and if that was not the case, then the evils of the separate management of joint estates would not have been so great as to lead the Government to propose a measure on the subject, of which the hon'ble member himself was well aware. In the majority of estates, he might say, the ryots paid their rent directly to the zemindar, and although sub-infeudation had been extending rapidly, still the direct management of estates by zemindars largely preponderated.

Then the hon'ble member remarked that the Bill would give a fictitious security of title to property. He had in support of his position quoted the opinion of Sir Barnes Peacock, and had also alluded to the Bill which was prepared in 1852. The hon'ble member had himself answered the objection he had raised on the point. He had himself pointed out that there was a great difference between the Bills of 1852 and 1876; that the view which Sir Barnes Peacock took did not apply to the present state of things; that, whatever might be the opinion of the mofussil officers, the Bill did not profess to give additional security of title. When the hon'ble member had so distinctly and satisfactorily answered his own objection, he had left the Council very little to answer on this point. But BABOO KRISTODAS PAL might be permitted to observe, that if the registration of shares should in any degree lead people to attach greater value to it than was contemplated, surely such a result should not be regretted by the Council. The Bill distinctly provided that registration was intended only for the purposes of the Bill, and not for any other purpose, or to enhance the security of title to property. But if the collateral result should be as the hon'ble member had supposed, it should not be a matter of regret, and in that view of the case registration would be preferable to non-registration; for if with the aid of this Bill we could secure a registration of title to property, BABOO KRISTODAS PAL thought a greater boon could not be conferred. For his own part, he thought that the two Bills going hand in hand, viz. the Partition and the Registration Bill, would certainly cause considerable improvement in the record of rights in land, and if the Council accepted these provisions, they would confer a signal benefit upon the people.

The HON'BLE MR. DAMPIER said, the hon'ble member who moved the amendment said that the registration of interests was not a portion of the scheme of the Bill as originally introduced; that it was not mentioned in the Statement of Objects and Reasons. That was the case. But the hon'ble member would find that when MR. DAMPIER asked leave to introduce the Bill, he expressly stated that leave was not asked to make the registration of shares a part of the scheme, because it was considered impracticable to work such registration. That was certainly his own impression at the time. But he did not doubt then, more than he did now, that the imprac-

The Hon'ble Baboo Kristodas Pal.

ticability of working once got over, the benefit would be material. When the Bill went to the Select Committee, he strongly held the opinion that it would not be found practicable to work the measure. That opinion was shared by other revenue officers whose experience in the districts was not of to-day. On pressure being put upon the Committee by the two hon'ble members who spoke last, MR. DAMPIER being fully convinced of the advantages which would result if the measure could be worked out, suggested that they should consult the most able and experienced of the district officers who were working the revenue machine. The Committee did consult those officers, and MR. DAMPIER must admit that he was surprised to find, not a consensus of opinion, but a heavy preponderance of opinion of the local officers in favour of this registration being attempted. So he being convinced, by the evidence of those actually engaged in the work of the districts, that practically the measure was workable, and having long held the opinion that if the impracticability could be got over, great advantages would result from the registration of the extent of interests, he agreed with the two hon'ble members to whom he had referred, and the result was the Bill in the form in which it was now before the Council.

The hon'ble member had said that the ryots would never know the particulars of this registration. Not one in a hundred would know whose names were registered and the extent of their interests, and therefore they would not have the benefit of the sections which affected to give them protection against those zemindars who claimed to levy rent in excess of their registered interests. MR. DAMPIER could not agree in that. He believed that within a year after the law was introduced anywhere, any ryot who resided on any estate in which disputes were going on, would find out whose names were registered and to what extent, and from that moment he would object to pay one pice more than the rent properly due in accordance with the registered shares.

Again, the hon'ble member had said that the relief to the ryots would be inappreciable, because there were few ryots who held their lands directly of the zemindar. MR. DAMPIER admitted that the relief would only be to the ryots who paid directly to the zemindar. But it was not only the ryot who complained of the difficulty of not knowing to whom he should pay, talookdars and middlemen labored under it also. And he said that if these provisions succeeded, and in the event of their being found to afford practical relief, as far as they went, to those who paid directly to the zemindar, the present measure might probably be the germ of a further measure to be introduced hereafter, which should have for its object the registration of interests in under-tenures, so as to extend the benefit to all rent-payers.

Then the hon'ble member had said that the Bill was the same as the Bill which had been drafted by the Board in 1852. The Bill might be in its structure the same as the Bill of 1852, but it appeared in quite a different phase. The avowed main object of the draft of 1852, as put forward, was to increase the value of property by giving security to titles. Now, as stated by the hon'ble member opposite (Baboo Kristodas Pal), the advocates of the present measure did not claim that virtue for it. They admitted that the value

of the measure in that particular direction had been even dangerously over-estimated. It did not in itself profess to give any security of title. No prudent purchaser would be justified in relying on the register as sufficient to satisfy him that the title was secured. What he did claim for the Bill was this, that the fact of registration would help a purchaser in ascertaining in what direction he must look for the purpose of clearing the title. If a man's name was on the register, it would put the intending purchaser on an enquiry; it would give him a new lead, as it were, into the past history of the title to the estate. So much he did claim for the Bill, and he did think that even that was a great gain.

Then his hon'ble friend had said that the zemindars in distant parts of Bengal would misunderstand the object of the Bill, especially as some of the Government officials themselves did not understand its scope and object. Possibly at first this might be the case, but if the zemindar did not understand the object and intention of the Bill, and how far it affected the title to the property which he wished to purchase, he would have lawyers about him whose profession it was to understand laws, and would consult them just as anybody in England would do if he wished to purchase property.

To sum up then, MR. DAMPIER's doubts as to the practicability of the measure had given way before the opinions of the district officers. He had also been influenced by the wish of the zemindars for the registration of shares and by the assistance which such registration would afford to executive officers in many matters in connection with their daily work. Secondly, it would be a protection to tenants and ryots paying their rent directly to zemindars on estates in which disputes existed as to the amount of rent payable to different claimants. Thirdly, though he did not claim for this Bill that a consultation of the register would *per se* give any one any reasonable notion for believing that he could purchase an estate safely, yet he said that the Bill would give some help, would throw some light on that darkness which existed with regard to the titles and interests in estates in Bengal: it would go some way towards clearing away the chaos and ignorance which now prevailed in this respect. It would give clues towards following up and ascertaining how the title really stood. And fourthly, MR. DAMPIER thought another benefit of the Bill would be that it would tend to diminish confusion by bringing disputes as to claims and rights to an issue. The Council were all aware that such disputes, now often almost interminable, went on, and that they had the effect of distracting and harassing all persons connected with the land, and especially the tenantry; and it was claimed that the effect of the Bill would be to force such disputes to a point, and press on the definition of rights.

The HON'BLE MR. REYNOLDS would say a few words by way rather of explanation than of reply. He said this, because he thought no real answer had been given to the arguments he had used, and because in the course of the discussion he had been represented as holding opinions which he not only did not hold, but which he had distinctly disavowed. The hon'ble member opposite (Baboo Kristodas Pal) had said that one of MR. REYNOLDS' great objections to these clauses was the increase of work they would throw upon Col-

The Hon'ble Mr. Dampier.

lectors. He had expressly said that he attached no weight to that at all. His remarks had been treated as if they were directed against the Bill as a whole, whereas he was a cordial supporter of the Bill; and even as regarded the particular clauses to which he objected, he only desired that the Government should be allowed to defer putting them in force till it considered it safe to introduce them.

The words of the hon'ble member who had just sat down (Mr. Dampier) seemed to him to involve an acceptance of the whole principle of the amendment. Mr. Dampier had admitted that "possibly at first" these clauses might be misunderstood: and MR. REYNOLDS' only object was to prevent this possible misunderstanding, and to defer the introduction of these clauses until it was ascertained that they would not be misunderstood. But after the remarks of the hon'ble members who had spoken, he could not hope to carry the amendment, and it was unnecessary for him to say anything more.

The motion was then put and negatived.

Section 2 was agreed to.

A verbal amendment was made in section 3. Sections 4 to 6 were agreed to.

Verbal amendments were made in sections 7 and 8.

Sections 9 to 31 were agreed to.

The HON'BLE BABOO KRISTODAS PAL moved the omission of sections 32 and 33. He said, this was perhaps the only point upon which the Select Committee were not unanimous. The hon'ble member in charge of the Bill thought it necessary, perhaps more in deference to the opinion of the hon'ble member now absent (Mr. Schalch) than his own conviction, to include rent-free land in this Bill. Now, this was a Bill which professed to provide for the registration of revenue-paying lands. It had nothing to do with rent-free lands. Yet, inconsistently enough, these sections were introduced. As these two sections covered land which was not within the scope of the Bill, he thought it was inconsistent to include them. He need not repeat the reasons which the minority thought proper to urge in Select Committee, but his main objection was that they would indirectly tend to increase litigation. It was allowed on all hands that the zemindar would not readily admit the validity of claims to rent-free lands, while the claimant would not readily surrender his right, and the result would be that the parties would be forced into Court, and there would consequently be increased litigation. BABOO KRISTODAS PAL thought that these sections were foreign to the object of the Bill, and would therefore move their omission.

The HON'BLE MR. BELL said he would support the hon'ble member in his motion to omit these sections. On any point in connection with this Bill, he should be indeed sorry to place himself in opposition to the hon'ble member in charge of the Bill who had so skilfully carried it through Select Committee. But these sections, which were taken from the Road Cess Act, seemed to him to be totally out of place in the present Bill. They were very properly included in the Road Cess Act, because all lands, whether revenue-free or revenue-paying, were assessed to the road cess, and the cess imposed on rent-free land was collected by the zemindar, and therefore it was necessary

in the Road Cess Act to have a section of this sort. But he failed to perceive what conceivable purpose they would accomplish here. He agreed with the hon'ble mover of the amendment in thinking that these sections would be the cause of much litigation and many disputes. MR. BELL was quite prepared to allow the sections to stand if the hon'ble mover could show any practical purpose which they would answer. But, as far as he was aware, there was no practical purpose which they would serve; and considering that there was no reason for their introduction, and that they would tend to litigation and dispute, he thought that they should be omitted.

The HON'BLE MR. DAMPIER said, this Bill was a Bill to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof. He insisted that every plot of land, if all men had their rights, was either a plot of revenue-paying land, or a plot of revenue-free land. He held that if any one claimed to hold land in this country as revenue-free, the burden of proof was on that claimant; and until a man formally established his right to hold his land revenue-free, he was, so far as the Government was concerned, the holder of revenue-paying land. [The ADVOCATE-GENERAL.—That was the ruling of the old Sudder Court: the High Court had held differently.] The object of these sections was to bring every acre of land in the district under registry in one or other of the registers, and to give the Collector, the executive officer, knowledge (as regards every acre) of the person to whom he was to look for the fulfilment of the duties as proprietor of the estate as imposed by other Acts. These sections followed the two existing Acts, the Embankment and the Road Cess Acts. If a piece of land was held rent free, that would not entitle it to be entered in the revenue-free register. The revenue authorities could not recognize it as revenue-free unless the revenue-free title had been formally established. They must therefore enter it somewhere in the revenue-paying register; but where? The occupant would not by word or deed admit that his land formed part of this or that estate. The object was simply, in such cases, for convenience sake to prescribe a procedure for determining whether this piece of land should be treated as part of estate A on this side of the land, or of estate B on the other side of it for the purposes of the registry. No rights would be affected; and if this were not done, then the register would no longer profess to include *all* land in the district.

The HON'BLE THE ADVOCATE-GENERAL observed that these sections related to lands which were held, or claimed to be held, rent-free; but as far as the Government was concerned, unless they were recognised and admitted to be lakhiraj, they were revenue-paying lands, and should be included in the Bill.

The motion was then put and negatived, and the sections were agreed to.

Sections 34 to 44 were agreed to.

A verbal amendment was made in section 45, and the position of sections 45 and 46 was transposed.

Sections 47 to 70 were agreed to.

A verbal amendment was made in section 71.

Sections 72 to 87 and the preamble and title were agreed to.

The Council was adjourned to Saturday, the 8th instant.

The Hon'ble Mr. Bell.

Saturday, the 8th April 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble T. W. BROOKES,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

MOFUSSIL MUNICIPALITIES.

ON the motion of the HON'BLE MR. DAMPIER, the Bill to amend and consolidate the law relating to municipalities was further considered in order to the settlement of its clauses.

To Section 3, on the motion of the HON'BLE MR. DAMPIER, the following clause was added:—

"All property, moveable and immoveable, of any kind whatsoever, derived under any of the enactments specified in the fifth schedule, or otherwise, and vested in, or held in trust for, the late Commissioners under the said District Municipal Improvement Act, 1864, or the late Committee under the said District Towns' Act, 1868, shall become vested in the Commissioners under Chapter II, and their successors; and all such property so derived, and vested in, or held in trust for, the late Commissioners under Act XXVI of 1850, shall become vested in the Commissioners of the station under Chapter IV, and their successors."

In Section 5, clauses (1) and (2), verbal amendments were made in the definitions of "carriage" and "cart;" and clause (13), the definition of "navigable channel," was omitted as unnecessary.

A verbal amendment was made in Section 6.

Section 31 was omitted as unnecessary, consequent on the addition made to Section 3.

The HON'BLE MR. DAMPIER moved the insertion of the following clause at the end of Section 79 (relating to the tax on persons), and the omission of a similar clause from the end of Section 81:—

"Such tax shall not be assessed or levied on any person in respect of the occupation of arable lands, or of any building which is used exclusively as a place of worship."

In Section 90 (exemptions from the tax on holdings) the words "or as a hospital" were omitted.

A verbal amendment was made in Section 111.

On the motion of the HON'BLE MR. DAMPIER, the following section, taken from Section 27 of Bengal Act IV of 1871 (the Pooree Lodging-houses Act), was introduced after Section 197:—

"Whoever, being the occupier of a house in or near any public road, keeps, or allows to be kept, for more than twenty-four hours, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil, or filth, or any noxious or offensive matter, in or upon such house, or in any out-house, yard, or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, shall be liable to a fine not exceeding fifty rupees."

And the following sections, taken from Sections 69 and 70 of Bengal Act III of 1864 (the District Municipal Improvement Act), were introduced after Section 200:—

"The Municipal Commissioners may license such necessaries for public accommodation as they from time to time may think proper; and whoever shall keep any public necessary without such license, or, having a license for a public necessary, shall suffer the same to be in a filthy or noxious state, or shall neglect to employ proper means for cleansing the same, shall be liable to a fine not exceeding fifty rupees, and such license may be withdrawn.

"Whoever, being the owner or occupier of any private drain, privy, or cess-pool, shall neglect or refuse, after warning from the Municipal Commissioners, to keep the same in a proper state, shall be liable to a fine not exceeding fifty rupees."

A verbal amendment was made in Section 215.

On the motion of the HON'BLE MR. DAMPIER, a verbal amendment was made in Section 233, and the following section was introduced after Section 233:—

"233*a*. Whoever causes or allows the water of any sink, sewer, or cess-pool, or any other offensive matter belonging to him, or being on his land, to run, drain, or be put or thrown upon any road, or causes or allows any offensive matter to run, drain, or be thrown into a surface drain near any road, shall be liable to a fine not exceeding twenty-five rupees for every such offence."

Verbal amendments were made in Sections 285, 286, and 338; and Section 337 was omitted.

On the motion of the HON'BLE MR. DAMPIER, the following words were added to Section 372:—

"And the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal, Union, or Station Fund (as the case may be), and shall be available for the purposes of such fund."

In the schedule of repealed Acts (Schedule V, Parts I and II) some necessary amendments were made.

On the motion of the HON'BLE BABOO RAMSHUNKER SEN, a verbal amendment was made in Section 364; and in Section 369 the period after which the proceeds of unclaimed holdings should be transferred to the Municipal Fund was extended from one year to three years.

The HON'BLE MR. DAMPIER then moved that the Bill be passed.

HIS HONOR THE PRESIDENT said—"It will be entirely for the Council to decide whether this Bill should be passed; but I wish to say that, for myself, I think that the Bill has been most fully and amply considered down to its minutest details, and that there appears to be no reason why it should not be passed.

But before putting the motion, I should like to make one or two observations on the resolutions passed at a meeting of a number of respectable native gentlemen at Bhowanipore, which appears in the newspapers this morning. With all respect for those gentlemen, I should like to make a few remarks that occur to me for the consideration of hon'ble members. The first resolution at which the meeting arrived is this—

"That this meeting records its dissatisfaction with the present system for the administration of municipal affairs in the suburbs of Calcutta, there being no bond of union between those who administer the municipal funds and those who have to find the same; and observes with anxiety the expansion of the objects of municipal expenditure, and the studied exclusion of the Imperial and Provincial Funds from due liability for the same."

The Council will observe that there are two points in that resolution—*first*, that these gentlemen think that there is not a sufficient "bond of union between those who administer municipal funds and those who have to find the same." I really do not know what that means. It is a vague and general observation, and one which it is not possible for the legislature to remedy. If there is not a good understanding between the Commissioners and their constituency, it is difficult to remedy that defect by legislation. This Bill provides for the introduction of the elective system, and if the rate-payers are not satisfied with the existing Municipal Commissioners, they will have an opportunity under the Bill of lawfully electing their representatives; and after that the Council must presume that there is confidence between the electors and the elected. If the system of election does provide that mutual confidence, then I submit that it is impossible for the legislature to do more.

The next point in the resolution is this: "The studied exclusion of the Imperial and Provincial Funds from due liability" for municipal expenditure. That is a large question, settled by a variety of considerations. It is not within the power of the Council or the local Government to provide Imperial Funds for municipal expenditure; and most of the hon'ble members are doubtless aware that it is quite impossible for the Government to give any help from Provincial Funds. If we are able to do so, there is nothing to prevent it; but I think the Council will agree that it is impossible to spare anything for municipal expenditure. So I submit that there is nothing in the first resolution which the Council can take into practical consideration.

The second resolution runs in this form:—

"That this meeting believes that the introduction of a popular elected element in municipalities will lead to a more economical and impartial administration of municipal funds, and deprecates, on principle, any increase of taxation, however slight or indirect, till the proposed remedy has been tried."

There are two points in this resolution—*first*, the elective principle; and *secondly*, increase of taxation. As regards the introduction of the elective principle, I have no doubt that it will lead to a more economical and impartial administration of municipal funds: in that I believe the Council will entirely concur. But they further 'deprecate any increase of taxation.' Now, that increase of taxation question has been mentioned so many times in this Council that it is difficult to enumerate the number of occasions of such mention. I

believe that all the members will agree that the increase of taxation in this Bill is really almost nothing; whereas, on the other hand, there are decreases of taxation in one or two items: so that the net result is rather favorable to the tax-payer than otherwise. And I am sure the Council will consider that there is no reason on this account to make even the slightest alteration in a single section of the Bill.

The third resolution says—

"That this meeting protests against any grant or aid from municipal funds to educational institutions where religious education is directly or indirectly compulsory."

Now, that is a very arguable point which, as the members will recollect, has been fully and satisfactorily considered in the Council. We have had the advantage of hearing all that can be said from one or two hon'ble members, also of hearing the answers given to those arguments; and the Council has deliberately decided, after full consultation, and after full hearing of the arguments, to retain the section which relates to this point.

These, then, are the three resolutions which were arrived at by the meeting; and I submit, for the reasons I have stated, that there is nothing in any one of them which should induce the Council to modify the opinions it has already formed, or to delay the passing of this useful and important measure."

The Hon'ble Mr. Dampier said he would wish to add a few words to what had fallen from His Honor the President, to correct a misapprehension which seemed to exist. One of the resolutions passed at the meeting referred to "deprecated, on principle, any increase of taxation, however slight or indirect." He saw that some of the native papers were calling upon the people to band themselves together to protect themselves against the contemplated increase in the scope of municipal taxation. This, as had been said over and over again, was founded on misapprehension. He thought that the Act which was passed in 1873, after the Municipal Bill of Sir George Campbell was vetoed by the Governor-General, had been overlooked. That Act, which was the existing law, introduced the innovations which seemed to be the subject of complaint. If any hon'ble member would point out specifically any point upon which he considered that this Act introduced a new object to which the municipal funds might be applied, Mr. Dampier thought he could point out a section of the existing law which already legalized the application of municipal funds to that purpose. So far as he was aware, not one single new object of municipal expenditure was created by the present Bill, and nothing was made compulsory which was left optional by the existing law.

The Hon'ble Baboo Kristodas Pal said, before the motion was put to the vote, he thought it necessary to point out that the charge of increased taxation was not altogether groundless. It was true that in Committee of this Council concessions were made on two important points which had a tendency to increased taxation—they were the horse and carriage tax, and what he might call the conservancy cess. Hon'ble members would recollect that the schedule of horse and carriage tax attached to the Bill nearly doubled the tax prescribed in the schedule to Act III of 1864. No doubt the hon'ble mover had since thought fit to considerably reduce the scale of fees. With regard to

His Honor the President.

the conservancy cess, as he called it, he need hardly remind the Council that it was proposed to charge the inhabitants of mofussil municipalities for the removal of rubbish from the road-side; but after considerable discussion, that point was yielded, and it was now declared that fees should be charged for the removal of only business or professional rubbish when deposited on the street.

But the most important point (on which he might say hon'ble members were almost unanimous as to its mischievous and vexatious tendency) was that the road tolls had not only been retained, but extended to those municipalities in which they were not now levied. First of all it was urged that it would not be judicious to curtail the income of those municipalities where road tolls were now levied, because they yielded a large amount of revenue He for one was prepared to make the concession, because it might be difficult to replace the loss thereby sustained. But it was not only resolved to retain the road tolls where they were now levied, but to extend the power to levy them where they did not now exist. If that was not additional taxation, he did not know what was; and it would be a harassing mode of taxation. It was a mode of taxation which ought not to be tolerated anywhere where other means were open for bringing in a revenue. It was sure to prove a fruitful engine of harassment and oppression. That had been over and over admitted by the officers of Government; and he observed with regret the extension of the power to impose these tolls.

Then the hon'ble member in charge of the Bill had thrown out a challenge to any hon'ble member to point out any additional objects of taxation embodied in the Bill, and which did not find a place in the existing Acts. Of course BABOO KRISTODAS PAL had not now time to go over the whole of the sections of the Bill, and compare the provisions which bore on that point with the corresponding sections of the existing Acts, but he might generally observe that the hon'ble member had copied some of the provisions for the application of the municipal fund from the Calcutta Municipal Bill, and these provisions were quite new. One thing he might point out as a novel principle, so far as municipal government in Bengal was concerned, and that was the authorizing one municipal body to contribute funds towards works undertaken by another municipality. At any rate *that* was a new provision. It implied a system of municipal federation which, so far as he was aware, did not exist in any country, and which might lead to extensive and ambitious works, to the detriment of the ordinary requirements of a municipality, not to say that it would defeat the very object for which a municipal unit was formed.

Then, again, he might point out that this Bill for the first time laid upon municipalities the obligation to provide for the maintenance of establishments in the offices of Magistrates and Commissioners for the discharge of duties connected with municipalities. He held that the supervision of municipal work was a part of the general duty of the administrative agency of the country, and if it was justifiable to charge a municipality with the expense, why not charge as well a part of the salary of the supervising officers on the selfsame principle? Perhaps it would come to pass by and bye. This, he said, was a new provision.

Then, again, all the objects mentioned in Section 6 did not find a place in the existing Municipal Acts,—roads, bridges, embankments, tanks, ghâts, gardens, wharves, jetties, wells, channels, drains, privies, latrines, and urinals. Some of these were certainly legitimate objects of municipal expenditure; but if municipal funds were to be applied to the construction and maintenance of embankments, one could easily see that the whole of the income of a town might be absorbed in this work. There was a special Act for the construction and maintenance of embankments. Again, gardens were a superfluity in mofussil towns, which were not at all densely populated, and which did not therefore need opening out for the health of the people. Similarly, wharves and jetties more especially fell within the requirements of ports, and the expenditure on that account should be borne from port funds: in Calcutta they were so paid for. If there was a port fund in Calcutta for the execution of such works, much more was it necessary that the comparatively poor municipalities in the mofussil should not be burdened with the construction and maintenance of such works. In the mofussil there were but one or two municipalities in which wharves and jetties might be necessary. Chittagong was the only place he could now recollect in which such works existed, and there we had a large customs revenue.

Now, he submitted that he had gone over most of the objects which the hon'ble mover had introduced, in addition to what obtained in the existing Municipal Acts. Two things were thus clear—that there was additional taxation, and that there was a multiplication of the objects of municipal expenditure, many of which should not come under it.

The third point was this. The Hon'ble President had referred to the proceedings of a meeting held at Bhowanipore, and had gone carefully, *seriatim*, into the subject. Baboo Kristodas Pal admitted that the resolutions were vague and indefinite, and he wished that those gentlemen in the mofussil who were interested in the Bill had taken time by the forelock, and had made known their wants and grievances before the Bill had reached its last stage. He need not go into the questions raised by the resolutions, because they had been already answered by the President. He did not, however, agree with His Honor that the question about the application of municipal funds to the maintenance of religious schools was satisfactorily decided in this Council. In fact, His Honor might remember that there was a tie on the motion for the exclusion of these schools from amongst the objects of municipal expenditure, and that it was only the casting vote of the President which decided the question in the negative. But be that as it might, there was a distinct vote in the Council on this question. He confessed he was not satisfied that it was right in principle that a tax paid by persons belonging to other religions should be applied to the maintenance of institutions which were kept up avowedly with the object of subverting their religion. There was a strong feeling in the matter, for the taxes which were paid by Hindus and Mahomedans ought to be applied to the secular education of the children of the soil, and not for the propagation of an antagonistic religion. But let that pass.

The Hon'ble Baboo Kristodas Pal.

Then the hon'ble mover had been pleased to point out that the Bill did not make anything compulsory which was hitherto optional, and did not give a discretionary power where such power did not now exist. BABOO KRISTODAS PAL submitted that this Bill came within the objections taken by the Viceroy to the Bill of 1872. The great objection which His Excellency took to that Bill was that it left a large measure of discretion to the executive authority; and this Bill, at every step, left a discretion to the executive quite to the extent left by the previous Bill. This Bill, in its conservancy and sanitary regulations, far exceeded the provisions of the former Bill. The Bill of 1872 did not, so far as he recollected, contain the building and bustee regulations embodied in the present Bill, which were very stringent, and could not be worked in the mofussil without producing great injustice and oppression. He thought that the operation of these sections, if they were necessary at all, should be confined to the municipalities of the suburbs of Calcutta and Howrah; but he was told that it would be left to the discretion of the Executive Government to extend these provisions. Now, it was this matter of discretion of the executive which drew the attention of the Viceroy and led to the vetoing of the former Bill. His Excellency's remarks on this point were as follows:—

7. "It is true that many of the provisions of the Bill to which His Excellency objects are permissive, and depend for their introduction upon the exercise of the powers committed to the Lieutenant-Governor of Bengal. The present Lieutenant-Governor has expressed his intention to use with great caution and reserve the powers which would be placed in his hands; and His Excellency cordially agrees with the sentiments expressed by His Honor that it is unwise "to push too far sanitary and other regulations which may effect some future good at the cost of great individual vexation." And that in introducing such regulations we must recollect "not only that our knowledge of these subjects is yet imperfect, but also that much regard must be had to the habits and feelings of the people which, even in Europe and still more in this country, are opposed to great innovations in matters affecting their daily lives in their homes and neighbourhoods:" but while entirely concurring in these views, His Excellency must, in dealing with the Bill, look rather to the powers which it confers than to the extent to which for the present it is proposed to make use of those powers. If he objects to any material provisions contained in a proposed law, for which his assent is required under the Indian Councils' Act of 1861, it is not sufficient for His Excellency to be informed that the officer in whose discretion their introduction is vested considers that action should be suspended or deferred. No feeling of confidence in the discretion of any one man in whose power the administration of a law may for the time being be placed would, in His Excellency's opinion, justify him in assenting to a measure, to any essential provisions of which, if fully brought into operation, he entertains such serious objections as he does to some of those which are contained in the Bengal Municipalities Bill."

Now, BABOO KRISTODAS PAL had already pointed out that in the matter of building regulations, bustee improvements, sanitary rules, and market provisions, a very wide discretion was left to the Government—a discretion to which the Viceroy had taken exception, and on which ground His Excellency had vetoed the former Bill.

He would read one paragraph more from the letter which conveyed the disallowance of the Bill of 1872. It was the last paragraph:—

11. "While His Excellency regrets that the great labor which has been bestowed by His Honor the Lieutenant-Governor and the Legislative Council of Bengal upon the

preparation of this Bill will not produce any immediate results, it is not his desire to interpose an obstacle to improvements in the municipal law of Bengal, provided that such improvements are not accompanied by any material increase of taxation, or by changes so extensive as those which are embodied in the present Bill."

These were the two conditions laid down for the amendment of the municipal law—*first*, that there should be no increase of taxation; and *secondly*, that no material innovations should be introduced. BABOO KRISTODAS PAL had endeavoured to show to the Council that, on the point of increased taxation, the provisions in the Bill relating to road tolls were quite sufficient to justify him in holding that there had been additional taxation, and that in a most objectionable form. And in regard to innovation, he thought that the discussions in Council had sufficiently shown that there had been great, material, and injurious innovations in the Bill, which required the serious consideration of the Council.

On these grounds, he thought it his duty to object to the passing of the Bill.

The HON'BLE MR. DAMPIER said that, in replying to the hon'ble member, he would confine himself to three specific points. The hon'ble gentleman said there had been increased taxation, first in the provision which enabled one municipality to contribute to useful works which were undertaken by a neighbouring municipality, and which would be beneficial to itself. If that was to be called increased taxation, to that extent he admitted that the Bill did provide increased taxation. But he did not think that this was a fair use of the words. [The HON'BLE BABOO KRISTODAS PAL observed that he said that it was a multiplication of the objects of taxation.] MR. DAMPIER could not admit that; but if taxation itself was not increased, what could be the harm of increasing the objects to which they might be applied according to the requirements of circumstances, and at the option of the municipal bodies. The hon'ble member to his right (Mr. Bell) had just suggested that the effect of this provision might be said to be to diminish expenditure rather than to increase it, for it enabled two municipalities to club together for a common object, and each one, instead of paying the whole cost of the work undertaken, would only pay one-half; as, for instance, in the case of a water-supply where one set of head-works would supply two municipalities.

Another example, which the hon'ble gentleman had thought worthy of bringing forward of increase of taxation was the very minute contribution which municipalities of districts and divisions in which these institutions abounded could be called upon to pay towards the expense of a clerk, or two clerks, employed at the Commissioner's and Magistrate's offices for supervising the work of municipalities. MR. DAMPIER really thought this petty item not worthy of notice in connection with so large a question; and he thought that if the adversaries of the Bill were driven to give a prominent place to this, as an instance of the increased burdens thrown on tax-payers by the Bill, it might be accepted as an indication that there was nothing very serious to complain of in this direction.

The third point which he would notice was the question of tolls on roads. As things stood, the Lieutenant-Governor might impose tolls on roads wherever he thought fit. This Bill provided that within municipal limits the

The Hon'ble Baboo Kristodas Pal.

Commissioners themselves might impose tolls, but only with the sanction of the Lieutenant-Governor, and only for certain specific purposes. If they wished to construct an expensive bridge, or to make a metalled road which would benefit the municipality, they might, with the consent of the Lieutenant-Governor, levy tolls for that object, and they might not impose them for any other. Compare the two states of things. This Bill apart, the Lieutenant-Governor had authority to put on any tolls on any road he liked, and to do what he liked with the proceeds. Under this Bill the Lieutenant-Governor was practically barred from doing so within municipalities, except on the recommendation of the Commissioners; and they again were barred from recommending the imposition of any toll, except for the particular purposes which MR. DAMPIER had mentioned. Surely it was hardly reasonable to speak of that as an increase of taxation, or of the objects of taxation.

The expenditure of municipal funds on wharves and jetties was legalized on the suggestion of the hon'ble member opposite (Baboo Ramshunker Sen), and MR. DAMPIER would leave that hon'ble member to explain the reasons for the amendment which he had moved.

The HON'BLE BABOO RAMSHUNKER SEN stated that from his own experience he knew that the cost of the construction of wharves and jetties was now paid for by municipalities, and that they were maintained from municipal funds; and he did not see that there had been any increase in the objects of municipal expenditure under this Bill.

The Council then divided:—

Ayes 9.	*Noes* 2.
The Hon'ble MOULVIE MEER MAHOMED ALI.	The Hon'ble NAWAB ASHGAR ALI.
„ Hon'ble MR. BROOKES.	„ Hon'ble BABOO KRISTODAS PAL.
„ Hon'ble BABOO RAMSHUNKER SEN.	
„ Hon'ble BABOO ISSER CHUNDER MITTER.	
„ Hon'ble MR. BELL.	
„ Hon'ble MR. REYNOLDS.	
„ Hon'ble SIR STUART HOGG.	
„ Hon'ble MR. DAMPIER.	
„ Hon'ble THE ADVOCATE-GENERAL.	

So the motion was carried and the Bill passed.

PARTITION OF ESTATES.

ON the motion of the HON'BLE MR. DAMPIER, the Council proceeded to the further consideration of the Bill to make better provision for the partition of estates in order to the settlement of its clauses.

Verbal amendments were made in sections 31, 33, 36, and 37.

The HON'BLE MR. DAMPIER moved the introduction of the following section after Section 42:—

"42*a*. Whenever it shall appear to the Lieutenant-Governor that in any district the work required to be done by Deputy Collectors in connection with partitions under this

Act is so great that such work would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, the Lieutenant-Governor may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district as part of the cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary, in addition to the item mentioned in the last preceding section, shall be deemed to be a portion of the costs of every partition.

"For the purposes of this section, the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade."

He said, as the Bill stood the pay of the Deputy Collector in any district in which partitions were frequent, and in which an Estates' Partition Fund was started, would be charged to such fund. The hon'ble member opposite (Baboo Kristodas Pal) objected to that provision, and asked for a reconsideration, and MR. DAMPIER had been able to meet him as far as the section now proposed went. The hon'ble member was against the principle of the section altogether; but he was aware that the sense of the Council was against him, and was prepared to accept this modified provision. The tenor of the proposed section was, that whenever the work of partition was not enough, on a fair view of the matter, to occupy the whole time of a Deputy Collector, no charge was to be made on that account against the proprietors of the estates under partition. But when the work was sufficient to occupy one man's time, the pay of the Deputy Collector would be levied from the proprietors as part of the expenses of the partition. Then it was urged that the whole charge should not be debited to the Estates' Partition Fund, but merely a part of it, as the Government was interested in the work of partition. To that MR. DAMPIER would answer that under the section he now proposed the amount to be charged was never more than the pay of a Deputy Collector of the lowest grade, whatever might be the salary of the officer actually employed on the duty, although as a fact a more highly paid officer would often be employed on this work. Secondly, what was charged was the bare pay of the Deputy Collector without any travelling allowances. He thought that the travelling allowances and the difference between the actual pay drawn and the pay of the lowest grade would amply represent the share of expense which the Government ought to bear.

The HON'BLE BABOO KRISTODAS PAL said his views in this matter had been correctly explained by the hon'ble member. He was of opinion that as the services of the Deputy Collector were necessary chiefly with the view of protecting the Government revenue, it was but fair that the Government should bear the expense of his employment in partition cases, the proprietors of estates being made to pay the cost of all other establishment required for the work. The Council were aware that under the law of inheritance proprietors were entitled to partition, and they might amicably settle the partition amongst themselves if in such matters a second element was not in existence—he meant the Government revenue. It was therefore the duty of the legislature to provide that there should be a representative of the Government to watch and protect the interests of the Government. Such being the case, he thought it could not be unfair to call upon the Government to pay for the services of

The Hon'ble Mr. Dampier.

the Deputy Collector, who was its representative. In fact it was this principle on which the Government had for the last seventy years been paying Deputy Collectors in charge of partition work, and BABOO KRISTODAS PAL was not aware of any circumstances which had since arisen and which required a departure from it. But as the sense of the Council seemed to be against such a provision, he intimated to the hon'ble mover that he would be prepared to accept this amendment if the hon'ble member would agree to divide the salary in equal moieties between the Government and the proprietors. This was an important question. The hon'ble member admitted that it was but just that the Government should contribute a portion of the expense consequent upon the employment of Deputy Collectors in the work of partition, but the section now proposed was not sufficient. It was true that the minimum pay of the Deputy Collector was to be charged, and that the Government might require the services of an experienced officer for the supervision of partition work; but on the principle on which he contended that the expense should be borne by the Government, it was quite immaterial what class of Deputy Collectors might be employed, when, strictly speaking, it was the duty of the Government to pay him. If the Government was directly interested in the work of the butwarah Deputy Collector, was it not right and proper that at least one-half the pay of such Deputy Collector should be borne by the State? BABOO KRISTODAS PAL thought the justice of this proposition was apparent. He would therefore move the insertion of the words "a moiety of" before the words "the salary" in line 11 of the proposed section, and that a similar amendment be made in Section 47, clause (*c*).

The HON'BLE THE ADVOCATE-GENERAL said he was wholly opposed to the amendment. He could not conceive how the Government was interested in the partition of estates in the manner the hon'ble member supposed. Partitions were made solely for the convenience of the parties. It was one and the same thing to the Government whether the revenue was paid in one sum or in two or more sums constituting the required amount for which the parent estate was liable. No doubt in the course of partitions it was necessary to guard the Government interest, so that each divided estate should be able to pay the amount of revenue assessed upon it. But in all other respects partitions were made entirely for the benefit and convenience of the persons concerned.

Further, if partitions were not made by the Collector, they would have to be made by the civil court, and the expenses would be considerably increased. The assistance of the Deputy Collector was therefore given for facilitating the work of partition; and the ADVOCATE-GENERAL thought a sufficient concession was made by the Government allowing one of their officers to supervise the work. He could not admit that the Government was so interested in the work of partition as to be saddled with a portion of the cost.

The HON'BLE MR. DAMPIER said it was true that the Government was interested to the extent of seeing that the partition was not made so as to endanger the Government revenue; but if the Government officer were to confine himself to that, his duty would be merely to test the partition when brought to him ready made by the proprietors. But was that all he had to do?

By no means; he had to begin at the beginning and attend to the whole process of measurement, ascertainment of true facts, collection of rent-rolls, and he had, generally speaking, to bring the proprietors together. The hon'ble member had said that if it were not for the necessity of protecting the Government revenue, the partition could be easily made by the parties themselves. MR. DAMPIER asked whether it had not been said over and over again in this Council that it was impossible, in the present state of society in this country, for the members even of a joint Hindoo family to agree together in carrying out a common object of this sort. It came to this: if the Government were not to give the services of its officer in effecting the partition, the proprietors would, in the great majority of cases, be practically debarred from availing themselves of the benefits which the partition law held out to them, for they would be unable to make the necessary amicable combination for the attainment of the common object. Under these circumstances, it could not properly be said that the Deputy Collector was only employed, or was mainly employed, in partitions in the interests of the Government.

The HON'BLE BABOO KRISTODAS PAL'S amendment was then negatived, and the HON'BLE MR. DAMPIER'S motion was carried.

Verbal amendments were made in Sections 45, 47, and 60.

On the motion of the HON'BLE MR. DAMPIER the following section was substituted for Section 82:—

"82. Whenever the Collector shall have approved a partition (whether with or without amendments), he shall cause a notice to be served on each of the recorded proprietors that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the date of the service of the said notice, or if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extract of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper, as provided in the next succeeding section, then within six weeks of such date."

Unimportant amendments were made in Sections 88, 100, 128, 131, 133, 147, and 149, and the position of some of the sections was transposed.

On the motion of the HON'BLE MR. DAMPIER, the Bill was then passed.

SETTLEMENT OF RENT DISPUTES.

On the motion of the HON'BLE MR. DAMPIER, the Bill to provide for enquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances, was further considered in order to the settlement of its clauses.

A verbal amendment was made in Section 11.

The HON'BLE BABOO KRISTODAS PAL said that since the publication of the rules contained in Section 14*a* in the Gazette, public attention had been directed to them, and he might state for the information of the Council that his attention had been drawn to some of these rules as not being quite satisfactory. In the first place, it had been pointed out to him that the dictum of the High Court as to the rule of proportion was not quite consistent with the substantive law. When it was admitted on all hands, and when it was, he believed, unanimously agreed

The Hon'ble Mr. Dampier.

upon by this Council, that the rule of proportion was not at all workable, practical men thought that it was useless to encumber the present Act with that rule. It was only one full bench of the High Court which had laid down that rule: another full bench might upset it at any time.

Then with regard to the new rules that were proposed, he might observe that rule (*a*) was not quite explicit. It was contended that the proviso that the Collector should fix the rent in such a manner as to represent such portion of the existing average gross value of the land with reference to the circumstances of each case was not quite clear. It was urged that there was a confusion of terms in that rule, that was to say, between the rate of rent and the amount of rent. If the rate or the share of the produce were laid down, then the amount of rent would be regulated according to the circumstances of each case. But how could the rate or share of the gross value of the produce of the land be regulated with reference to the circumstances of each case? Whatever portion of the gross value of the produce the Collector might adjudicate should be decided according to some definite principle; that was to say, the rate being fixed, the amount of rent might be regulated according to the circumstances of each case. But if the rate was to vary according to the circumstances of each case, there would be great uncertainty and confusion; in fact, there would be no uniformity whatever. Not only would two different Collectors act in two different ways, but perhaps the same Collector might determine one rate of rent for one piece of land and another rate for another piece of land, though both pieces of land might be of the same quality and be possessed of the same advantages. Therefore rule (*a*) was considered indefinite and calculated to lead to confusion.

Rule (*b*) was believed to be open to great objection, inasmuch as it intensified the evils which the ruling of Sir Barnes Peacock was calculated to produce. If it was difficult to carry out a ruling laid down by such an eminent authority like the late Chief Justice because the outgoings were not easy to be calculated, it would be much more difficult to calculate the net profits of cultivation, and then to divide the profits between the zemindar and the ryot. There were so many conflicting elements in these calculations, and it would be so difficult to bring them to a satisfactory conclusion, that practically it would be impossible to carry out rule (*b*).

With regard to rule (*c*), it was urged that it was a fair and equitable rule; but unless the allowance to be given to occupancy ryots were fixed by law, it might in the one case lead to injustice to the ryot, and in the other, if the Collector was so inclined, it might lead to injustice to the zemindar. In fact it left everything in the hands of the Collector, and possibly he might be led by his own sympathies and inclinations to defeat the intentions of the legislature, though acting in perfect good faith. Reference had been made by the Hon'ble President to the Punjab Tenancy Act and the Oudh Rent Act. His Honor very fully and lucidly explained the principles upon which those Acts were based; and if those principles were adopted, that was to say, if the deduction to be made from the rent of occupancy ryots were fixed by law, then the difficulty and confusion which were apprehended from the operation of rule (*c*) would disappear.

BABOO KRISTODAS PAL believed that the learned Secretary had received a communication from the British Indian Association upon the subject of these rules, in which all these arguments were fully set forth. He had endeavoured to state to the Council his opinion on these rules. He believed that the Council had come to a decision to lay down some rules for the guidance of the Collector, and it would be much more satisfactory if the Council would make the rules as definite as they possibly could.

The HON'BLE THE ADVOCATE-GENERAL said he would ask permission to add after the words "the Collector may" the words "if he think it proper so to do," in order to make it quite clear that the application of these rules was perfectly optional.

With regard to the observations which had been made as to the rules not being definite, they were simply a repetition of what had been said both in the Select Committee and in this Council. On the other hand, the Council was told by the hon'ble and learned member on his right (Mr. Bell) that these rules were an alteration of the existing law. The ADVOCATE-GENERAL had ventured to point out that they were not an alteration of the law, but that they were merely suggestions made to the Collector, which he might keep in view in deciding what might be "fair and equitable," provided he was unable to apply the rule of proportion laid down in Thakoorance Dossee's case. It was quite possible that the Council might fall into the difficulty apprehended by his learned friend—that they were altering the law—if they made the rules definite by giving to the zemindar a certain fixed proportion of the produce of the land. That would be an alteration of the law. Having regard to the fact that it was not the intention to alter the law, these rules could not be made more definite than they were; they might be susceptible of improvement, but they could not certainly be made more definite. The objection taken by the hon'ble member opposite (Baboo Kristodas Pal) was a good one; but unfortunately, as matters stood, the Council could not improve the rules by overcoming the objection as to indefiniteness without clashing with the other principle of not varying the substantive law. All that the rules were intended to point to was simply this, that when the rule in Thakoorance Dossee's case could not be applied, then the Collector, who would still have to determine what should be a fair and equitable rent so that the zemindar should get a fair proportion of the increased produce of the land, might be assisted by certain standards or principles to guide himself in arriving at his decision. That was all that these rules professed to do. It was intended that the rules should be supplementary to the broad principle laid down in Act X of 1859, that the adjustment of rents should be "fair and equitable." These rules would point to what might be taken as standards of adjustment; they would furnish the *ratio decidendi*. He had remarked before upon the difference between the ground of enhancement and the mode of enhancement. The mode of enhancement was not the ground of enhancement, but the *ratio decidendi* upon which the enhancement should be fixed. If objection were made to the *ratio decidendi*, on the ground that it might embrace some ground found in Section 17 of Act X of 1859, the answer was that such ground was merely used as a means to an end,

i.e. to the decision of what was fair and equitable. The rules only applied after it had been decided that the right to enhance existed, and the right only existed when a ground had been substantiated for enhancement. Once given the ground that the produce of the land had increased, and it followed, under Section 17 of Act X of 1859, that the zemindar had a right to a proportion of the increased value. The question next arose as to what proportion? That question the Collector had to solve. He had to solve it by the rule laid down in Thakooranee Dossee's case; and if it could not be so solved, then these rules would enable him to arrive at a better result than if left to his own discretion, and he had to decide what was fair and equitable on principles somewhat resembling this, or else in an entirely arbitrary and capricious manner. This Council could not, under existing circumstances, and unless the law was altered, provide for uniformity of decision. There could be no uniformity where the measure of enhancement was what was "fair and equitable." But he did not think that a greater amount of uniformity would be ensured without than with these rules; in fact, he thought that the rules would tend to greater uniformity of decision.

With that explanation he could only say that he could not go further in the direction of these rules. They were open to the criticism and the objection that they were indefinite; but they were purposely so framed. It appeared to him that there was no reason for altering these rules, unless the Council was prepared to change the substantive law by which the adjustment of rents between zemindars and ryots was at present regulated.

His Honor the President observed, with reference to the letter which had been received from the British Indian Association, that the main objection therein set forth was that the rules in the Bill left a great deal of discretion in the hands of the Collector. He would point out that the discretion left in the hands of the Collector was not at all wider than it at present was; and the discretion so left was hardly so wide as that which was now left to the civil court. The rules that had been introduced left the Bill where it was, namely a Bill for transferring temporarily that jurisdiction in certain particular classes of cases.

The Advocate-General's amendment was then agreed to.

Verbal amendments were then made, on the motion of the Hon'ble Mr. Dampier, in Sections 14*a*, 26, and 27.

The Hon'ble Mr. Dampier said, as he would not be present at the next meeting of the Council, he wished to say that he did not like the Bill in the form in which it was proposed to be passed. He would have liked the Bill to give the Government very much more arbitrary powers; and he would have insisted that whatever was done in the exercise of those arbitrary powers should be done on the responsibility of the highest revenue authority. He would have had it recognized to be a very severe remedy applied to a very severe disease. But the Bill had acquired a more judicial character in the hands of the Select Committee.

It only remained for him to say of these rules that his own opinion was that it was of little practical importance whether the rules were introduced in

the Bill or not. But the Council were given to understand that it would be very much more acceptable to the parties who would be more immediately concerned with this Bill if some such rules were introduced. It appeared to him that the rules authorized the Collector to do nothing which he might not do if no such rules existed; and therefore the introduction of them into the Bill was a defect which was open to criticism from a legislative point of view. But in view of making the Bill less unpalatable to those whose interests were touched, and who felt strongly on the subject, he had voted with those members who wished to have the rules such as they were. At any rate they seemed to him to be quite innocuous.

The HON'BLE MR. BELL observed that if what the hon'ble mover had just said was true, that it would be immaterial whether the Council passed this Bill with or without these rules, he thought they should be left out. He still entertained the opinion that the rules were totally opposed to the existing law. That was simply his own opinion, and as his opinion differed from that of the hon'ble and learned Advocate-General, it was probable that his opinion was wrong. But such was the opinion he had arrived at after great deliberation, and he was aware that it was an opinion which was shared by others. But if, as the hon'ble mover seemed to think, it was immaterial whether or not the rules were retained in the Bill, MR. BELL should certainly suggest for the consideration of the Council whether it would not be better to do without them altogether.

The Bill as amended was then ordered to be published in the Gazette.

REGISTRATION OF ESTATES.

On the motion of the HON'BLE MR. DAMPIER, the Bill to provide for the registration of revenue-paying estates and revenue-free lands, and of the proprietors and managers thereof, was further considered in order to the settlement of its clauses.

The following new section was introduced after Section 28:—

"28*a* Whenever it shall appear to the Collector in the course of an enquiry made in respect of an application under Section 37 or Section 42, or otherwise, that any person whose name is recorded in the General Register as proprietor or manager, or joint proprietor or joint manager of an estate or revenue-free property, is no longer in possession of any interest in such estate or property as proprietor or manager, and that the names of other persons have been recordedas proprietors or managers of every portion of the interest in respect of which such proprietor or manager's name was borne on the register, the Collector may order the name of such person to be struck out from among the recorded proprietors or managers of such estate or property, and, if required, may grant him a certificate to that effect."

Verbal amendments were made in Sections 37, 39, 55, 57, and 75, and Section 38 was omitted as unnecessary.

The HON'BLE MR. DAMPIER moved the substitution of the following new sections for Sections 74, 77, and 78:—

74. "The Collector shall supply an extract from any Register mentioned in this Act to any person who may apply for the same, subject to the payment of such fees for searching and copying as may be prescribed by the Board; and to any extract so supplied shall be appended a note signed by the Collector certifying whether any application for registration

The Hon'ble Mr. Dampier.

under this Act in respect of the estate or revenue-free property to which the extract relates is pending before the Collector, or on a reference by the Collector before a Civil Court, and if any such application be so pending, specifying the extent of the interest to which such application relates, and the grounds on which it is based."

77. "No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

and no person being liable to pay rent to two or more such proprietors managers, or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent, as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property."

78. "The receipt of any proprietor, manager, or mortgagee whose name and the extent of whose interest is registered under this Act shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee, unless an application for registration under this Act relating to the interest in respect of which such proprietor, manager, or mortgagee is registered is pending before the Collector, or on a reference by the Collector before a Civil Court."

The sections referred to were those which provided that the ryot should not be bound to pay rent to any one other than a registered proprietor, and that he should have indemnity for payments made to such proprietors. As the sections stood they were incomplete. The effect of them was to place any person who had given in an application for registration of his name precisely in the same favorable position as one whose name was actually registered.

On reconsidering the sections carefully with the learned Advocate-General they were satisfied of two things: first, that it was quite impossible to give to the rent-payers the protection which it was so desirable to give, if mere applicants were to be treated on the same footing as registered proprietors; and secondly, that there was no sound reason for so doing. It might be said that the applicant had done all he could to effect registration, and that therefore it was hard to keep him out of his rents until the application was disposed of, but he would remind the Council that such an applicant would be in one of two positions. Either his right to registration would be unopposed, in which case it would be disposed of as a matter of routine immediately the month's notices were expired, or else the right to registration would be opposed, in which case the applicant's position would be that he was asking to have his name substituted for that of another which was already on the register, which right was also claimed by some other person, either the one whose name was already on the register or some other. That was exactly the crisis at which the ryot most required the protection of these sections. It might be said that it was hard to keep a proprietor out of his rent until the question of his possession was decided; that it was not his fault that his claim was disputed. But it was by no means certain that he was in the right, and surely in such a case the onus lay on the claimant. It would be observed that the point that had to be determined for the settlement of the dispute as to registration was precisely the point which a plaintiff would have to make good in a suit for rent against the ryot. Putting aside the case of written contracts, on sueing for rent a plaintiff must prove that he

was in possession; and the moment he had succeeded in proving that, the obstacle to register his name as a proprietor fell to the ground. Without proving this point he could not recover rents by legal process; the moment he succeeded in proving it, the condition as to registration would no longer be a bar against his recovering.

Another very important point was that, as MR. DAMPIER had said, the time when a dispute existed was the precise time at which the ryot wanted protection. As long as two men were claiming the same four-annas share at present, the claimant with the longest lattee probably succeeded in collecting the rents which represented the disputed interest. Anything which would tend to put an end to this state of things must be so far good. On the whole, then, the Advocate-General and he considered that a man should not get the benefits of registration until his name was actually registered.

MR. DAMPIER would now explain how the sections were expected to work.

Under the proposed Section 77 the tenant was not bound to pay rent to any person claiming as proprietor or mortgagee of an estate in respect of which he was bound to register unless his name was registered, and further, the tenant was bound to pay no one except according to the extent of the share registered. Then Section 78 enacted that, for payments so made, the tenant would get indemnity, except as to any shares for which some other person had applied to be registered. For instance, A, B, C, and D were four proprietors who were registered as possessing four-annas share each. Under Section 77 a tenant need not pay more than a four-annas share of rent to each, and the fact of having so paid rent would give him an indemnity against all other comers, except in one case. Suppose there was an application pending by X for registration of his name in lieu of D for one of the four-annas shares. In that case the receipts of A, B, and C would give an indemnity for the rent paid in respect of their shares. But because there was a pending application for the substitution of X's name in the place of D, a payment made to D would no longer afford indemnity. The tenant was not bound to pay to the claimant X on the one hand, and on the other X would have no status for harassing the tenant by demands for rent; at the same time the law would not hold out any special encouragement to him to pay to D. He might pay or not as he chose, and any payments would be at his own peril; in fact, while improving the tenant's position in other respects, the law would leave the tenant precisely where he now was in respect of D.

Now, how was the tenant to know whether any application was pending;—that was an all-important question. The Council would now go back to Section 74, which provided that the Collector should supply extracts from the registers to any one who wanted them. So far there was this anomaly, that the Collector would in the case above instanced give an extract in which it would be stated that A, B, C, and D were each registered for four-annas share of the estate. That by itself would mislead the tenant into the belief that he would have full indemnity in respect of payments for each of these shares; whereas, in fact, there was lurking in the Collector's office an application by X

The Hon'ble Mr. Dampier.

for the registration of his name in lieu of D, which would have the effect, under Section 77, of destroying the indemnity for payments made to D. To guard against this danger it was provided by Section 74 that whenever a Collector gave an extract from his register, for whatever purpose, he should be bound to give to the person taking the extract a certificate stating whether any application for registration was pending before him, or was under reference to the civil court in regard to the estate. The Collector was absolutely prohibited from giving an extract without such certificate. Further, by Section 75 it was provided that when any change was made in the register, the widest publicity should be given of the fact on the estate to which the mutation related.

The HON'BLE BABOO KRISTODAS PAL said he was sorry that he could not agree with the hon'ble mover in the view he had taken of the new sections which he had just moved. BABOO KRISTODAS PAL did not expect that the hon'ble member would recede from the position which he had assumed. If he referred back to the history of the principle which underlay sections 77 and 78, he would find that it began with what he ventured to call a piece of outlawry, and it had ended again with another piece of much the same sort. He himself suggested that if the respective shares of proprietors were registered and facilities given to the ryots to know what were the respective shares of proprietors, and if provisions were made authorizing the ryots to pay only to the extent of the registered shares and not more, a great reform would be made upon the present system of the separate management of joint estates. He did not then expect that his suggestions would fructify in the way they saw in the sections before the Council. For it practically led to the disqualification of a proprietor who happened to be in dispute with a co-sharer as to the extent of his share. Section 77 was by far the most important, and it declared that no ryot should be bound to pay rent to any person who was not registered. Now, as he had pointed out before, a person, however anxious to have his share registered, might find many difficulties in carrying out the registration; for instance, a person might apply for registry, but the extent of his share might be contested by other sharers and he might be referred to the Civil Court, and so there might be delay and difficulty in obtaining registration. In the meantime was that proprietor to be deprived of the right of receiving rent from his ryots? He had been receiving rent; the ryots did not question his right or the extent of his share, but the legislature stepped in and required him to register. He was willing to register, but he had failed to do so because some one else put in an objection. As soon as he applied for registration an objection was made, and in the meantime the law declared that no ryot was bound to pay him any rent. The practical effect of the section would be to prevent the ryots from paying the rent. Section 78 made the point still more clear. It said to the ryot "not only are you not bound to pay, but if you do pay you will not be indemnified for such payment." What would be the combined effect of the two provisions taken together? The ryot would see that he might have to pay again, and that the best course would be that he

should not pay at all. Was that the position to which the legislature should deliberately drive the zemindar, because it was necessary for purposes of State to pass a law for registration, the primary object of which was to enforce certain responsibilities which had been imposed upon the zemindars?

BABOO KRISTODAS PAL submitted that the good of the measure would be greatly neutralized if the sections as now presented were passed without modification. He accepted the original section because it was founded on some principles of equity; because he thought that a ryot should not be compelled to pay rent to proprietors who were not registered. But if a proprietor had made an application for registration, and owing to a dispute his application could not be registered, his right to levy rent should not be barred. If hereafter the court decided that he had no right to collect rent, the ryot or the rightful owner would hold him liable for the rent which had been paid. But it was not for the legislature to prevent the ryot from paying rent. The hon'ble mover had said that a proprietor who had applied for, but had not succeeded in effecting registration owing to a dispute, could not receive rent unless he proved his right in court, because the same evidence which was required for registration under this law would be necessary to establish a claim for rent. BABOO KRISTODAS PAL joined issue on that point. If the zemindar had been in the habit of receiving rent, he had only to show that he had so received the rents in order to entitle him to continue to collect [The ADVOCATE-GENERAL—Suppose there was a notice from a rival zemindar; the ryot might have to pay twice over.] If a ryot paid rent to a man who was not entitled to receive it, he could easily recover the rent so paid. BABOO KRISTODAS PAL said that the legislature should not drive a man to a position in which if he had not means of his own he would be unable to meet the Government demand. On these grounds he opposed these sections, and said that he thought that the section as it originally stood was fair and equitable.

The HON'BLE MR. DAMPIER said he should only take up two points in the hon'ble gentleman's speech. He asked whether this was a position in which the Council ought to throw the zemindar, because they found it necessary to pass a Bill to compel registration for the general executive purposes of the Government. He must emphatically deny that the clauses exempting ryots from liability to pay rent to persons who were not registered were now introduced out of the desire of the Government to enforce registration. It was quite true that when the Bill was introduced the disability to sue was imposed on the zemindar as a direct means of enforcing registration, but he had joined his hon'ble friend in throwing out that section as for that object. He thought the means for enforcing registration were quite sufficient without it. Now, however, it was agreed that the registration of shares would lose more than half its value, unless it could be made use of to give some protection to tenants, some light to guide them as to whom they were to make their payments. It had been found absolutely impossible to frame sections in such a way that the tenant should really be protected in making payments in accordance with the registration, if the right of a mere applicant to recover rent from him as well was reserved; and it came to this, that either the Council must wipe

out altogether all those sections which affected to give ryots such protection, and to confer such an enormous boon, or else they must put the man who had not succeeded in getting his application for registration decided into the position in which this section placed him. MR DAMPIER had already said that if there was no dispute, the procedure for registration would be merely of a formal character. But if there was a dispute, that was exactly the case in which a ryot, if acting *boná fide*, required all the assistance and relief which the law could give him.

The hon'ble gentleman had said that the registration of the names of proprietors and the obtaining of a decree for rent did not depend upon the same point being proved. For instance, a man might be receiving rents, but under this section he would no longer be entitled to recover rents if his name was not registered. But if he had received rents, was he not in possession as proprietor, and what else had he to establish under this Bill to secure registration? [The HON'BLE BABOO KRISTODAS PAL.—The extent of share.]

He believed that there was no *via media*, and it would rest with the Council either to strike out these sections altogether, or to accept them and place an applicant for registration in the position in which these sections placed him.

The HON'BLE THE ADVOCATE-GENERAL said these two sections were the only sections by which it would be possible to give the ryot an indemnity for payments made by him. If the ryot was bound to pay to a man who had only applied for registration, what possible indemnity could there be, and the ryot might have to pay twice over. But in all these matters one must not look to apprehensions of a vague character: one must look to the usual consequences of events connected with registration. When a person had been long in possession and had received rents for a considerable number of consecutive years, there would be no difficulty in effecting registration. It might be said that in this country false claims were put forward; but even false claims must have some sort of basis to go upon. It could scarcely be supposed that when a person was in possession for twenty or thirty years his claim would be resisted by persons who sprang up at the time of the application for registration. The ADVOCATE-GENERAL'S answer to a great many of the objections made was that a person who was in possession would have no difficulty in having himself registered; that if objections were raised to the registration of a person so situated, he would have no difficulty in satisfying the Collector, through the medium of his gomashtas and naibs and the ryots themselves, that he had been in possession, and he would be put on the register at once. But if there were serious doubts as to possession, the Collector would refer the case to the civil court. If it so happened, was it not fair to suppose that the possession was not clear, and that it was a *boná fide* case of disputed possession? The object was to give the ryots an indemnity. A strong argument in favour of registration of the extent of shares was that at present the unfortunate ryot, instead of paying sixteen annas to the rupee, had to pay seventeen annas, and sometimes eighteen annas or more. It was for the purpose of protecting the ryot that registration of the extent of shares was proposed, and when it was proposed to give him the

benefit resulting from such registration, it was objected that the Council were giving a boon to which he was not entitled.

Taking up the subject of registration as it now stood, the ADVOCATE-GENERAL had seen cases in which the evidence as to the fact of possession was equally balanced; both parties paid the Government revenue, both had gomashtas on the estate, and ryots had sworn to the truth of the case on either side. In such cases the Collector and the Commissioner could not but refer the parties to the civil court. In other cases he apprehended that the Collector would have no difficulty in deciding who was in possession, and making a mutation of names. If there was no one who could legitimately receive the rent and give a receipt, the rents should remain where they ought to remain. The hon'ble member said that if the ryots paid the rent to the wrong person they might be recovered back. Why should the onus be thrown upon the ryot? Where there was a formidable dispute and neither party was able to obtain registration, then he thought it was nothing but fair and equitable that during the existence of that dispute the ryots should be protected. At present there was no machinery to protect the ryot; for although the civil court might appoint a receiver, in the mofussil the appointment of a receiver was very seldom resorted to. The ADVOCATE-GENERAL thought there was nothing unjust in these sections. If a man had possession of a zemindary, registration followed as a matter of course; if he was not in possession, or if possession were disputed, it was not hard that the supposed possessor should not collect his rents until the dispute was settled.

HIS HONOR THE PRESIDENT said that although he was unwilling to prolong the discussion, he wished to make a few brief remarks. The hon'ble member on the left (Baboo Kristodas Pal) said that supposing a zemindar was unable to collect his rents because he could not get registration, yet he was called upon to pay the revenue. Now, it appeared to HIS HONOR that by section 54 that could not happen, because if the Collector took the revenue from the zemindar, you might depend upon it that the Collector would give him registration; if there was any doubt, the Collector would decide it summarily in favour of the man from whom he took the revenue. It was not conceivable that any Collector would be so unreasonable as to refuse registration to the man from whom he received the revenue. So he must confess that he was quite unable to perceive the difficulty which had been pointed out.

After some conversation the Council divided:—

Ayes 6.	*Noes* 4.
HON'BLE MR. BROOKES.	THE HON'BLE MOULVIE MEER MAHOMED ALI.
" BABOO RAMSHUNKER SEN.	HON'BLE NAWAB SYED ASHGAR ALI.
" MR. BELL.	" BABOO KRISTODAS PAL.
" MR. REYNOLDS.	" BABOO ISSUR CHUNDER MITTER.
" MR. DAMPIER.	
" THE ADVOCATE-GENERAL.	

So the motion was carried.

The HON'BLE BABOO KRISTODAS PAL moved the introduction of the following section:—

"It shall be lawful for the Collector, before selling an estate for arrears of revenue, to send notice by registered letter or otherwise to the address of the registered proprietor,

The Hon'ble the Advocate-General.

informing him of the amount of the arrear; and the expense of such registered letter or other notice shall be recoverable from the estate, or share of an estate, as an arrear of revenue, but no sale shall be liable to be questioned on the ground that such registered letter or other notice was not issued or served."

The object of the provision might, he said, be attained by executive action, but he thought it would be more satisfactory if it were embodied in the law. This might also be regarded as one of the advantages of registration. The proposal was made in Select Committee in that view, and as far as he was aware the majority of the Committee agreed to it. If the Council accepted the principle of the section, the wording could be settled afterwards.

The HON'BLE MR. DAMPIER said he was against the motion, because, although the amendment did not say that the Collector should be bound to issue a registered letter before putting up an estate to sale for arrears of revenue, the effect would be to make every one expect that a registered letter would come before his estate was sold; it would tend to make the careless more careless, the dilatory more dilatory, in the payment of revenue. The last day of payment would no longer be on a fixed day for all, but would practically be some day after notice had been given to each proprietor that his estate was in arrear, such notice being given by a registered letter. Such a provision would do away with whatever the present much-abused law had in it of good in the way of making the zemindar punctual in the payment of revenue. If such a provision were published in a law, it would be a real hardship to sell any estate without issuing the registered notice, and although the civil court could not reverse a sale on the ground of no registered notice having been issued, still with such a clause existing in the law creating an expectation of notice by registered letter before an estate was put up for sale, no sale made by the Collector without the issue of such notice would ever be upheld in the large discretion given to the superior revenue authorities by the law.

The HON'BLE BABOO KRISTODAS PAL said it was well known that the sunset law, as it was called, was most rigorous, and that the Government was desirous of modifying its rigour. The Lieutenant-Governor had shown a most laudable desire to deal leniently in cases of default, being convinced that the present law was harsh. His Honor's opinion had been expressed in the official correspondence that had been published, that he would rather that notice were given in all such cases; and it was on the strength of that opinion that the proposal was made in Committee. BABOO KRISTODAS PAL did hope that the harsh and rigorous sunset law would be modified, if there was any way of modifying it without risk to the revenue.

The HON'BLE MR. DAMPIER said the proposed provision would be of no effect legally, but morally it would create a difficulty. The object sought to be attained might just as well be attained by executive orders passed by the Government; and those orders might be tempered so as to adapt themselves to circumstances, *e.g.*, it might be ordered that in cases in which the amount of arrear was less than a certain percentage of the annual revenue, a registered letter might issue.

The motion was then negatived.

HIS HONOR THE PRESIDENT said,—"Before we break up I want to crave the attention of the Council for a few minutes with reference to the departure of our colleague, Mr. DAMPIER. He has now been exclusively devoted to legislative business for two sessions, and to-day is the last occasion on which he will sit at present in the Council. We may hope before long to see him back amongst us; but as he will be absent for some time, I think it desirable to place on record what, I may say, is the unanimous sense of all members with regard to the great services he has rendered to the cause of legislation in Bengal during these two years.

I may call to the recollection of the members the number of Acts which have been passed through MR. DAMPIER'S instrumentality; not so much the easier measures which have been passed, such as the Bill for the Realization of Arrears in Government Estates, the Famine Advances Recovery Bill, the Mahomedan Marriage and Divorce Registration Bill. The first two were small measures; and with regard to the Mahomedan Marriage Bill, another member of the Council had a great share in its preparation. But even then it was through MR. DAMPIER'S instrumentality that this last named Bill was passed into law. Then he had also the preparation of the Irrigation Bill which has passed into law, also the Bill regarding the Abkaree or Excise Revenue Law. And latterly, he has been in charge of those two very difficult measures which have been passed through this Council to-day, namely, the Bill relating to Municipalities in Bengal and the Bill relating to the Partition of Estates. Besides that, he has had in hand what now are brought into a passable shape—that is, a shape in which the Bills may be passed through the Council—measures relating to the registration of estates and the prevention of agrarian disputes. We may hope that these two measures will soon pass the Council either with or without further amendment. So the list I have just read of the measures which have been passed through the hon'ble member's instrumentality does represent a large amount of legislation; and I am sure we shall all long remember the great carefulness, the conscientious and laborious assiduity, supported by the very extensive local knowledge and experience which he has invariably displayed. No doubt MR. DAMPIER will acknowledge the great assistance he has received from his colleagues in committee. But still I believe it will be the opinion of every one present that it is to him that the elaboration and comprehensiveness and practical utility of these measures is chiefly due. And I am sure that we shall all wish him speedy recovery of his health, which must have been considerably impaired by his arduous labours, and assure him of our strong recollection of the great value and usefulness of his services amongst us."

The Council was then adjourned to Saturday, the 15th instant.

Saturday, the 15th April, 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYED ASHGAR ALI DILER JUNG, C.S.I.,
and
The Hon'ble MOULVIE MEER MAHOMED ALI.

SETTLEMENT OF RENT DISPUTES.

ON the motion of the HON'BLE THE ADVOCATE-GENERAL the Bill for inquiry into disputes regarding rent and to prevent agrarian disturbances was further considered in order to the settlement of its clauses.

The HON'BLE MR. BELL said the first amendment he had on the paper was to add the following proviso to section 14*a*—

"Provided that no ryot whose rent is enhanced under the above rules shall be liable to any increase of rent in excess of twenty-five per centum on the existing rent."

Since he put that amendment on the paper it had been represented to him that it would be inconvenient to limit the discretion of the Collector in the manner proposed in the amendment. It had been said that in Eastern Bengal the ryots in some estates held at low rents, and that twenty-five per cent. might not be a sufficient enhancement to impose upon them. In deference to the opinion that had been expressed, he asked the Council to permit him to withdraw the amendment. But he wished at the same time to explain the circumstances under which he had been induced to put his amendment on the motion paper. He was afraid that it might be thought that he was anxious by a side-wind to neutralize the effect of the rules which were agreed to by a large majority of the Council about two weeks ago. He could assure the Council that that was not his intention at all. His object in putting the amendment on the paper was this, that as in the case of a suitor who goes to a court of equity from a court of law, the court of equity imposed such terms on the suitor as equity seemed to demand; so on that principle he thought that the Government, when giving the zemindars the advantage of an exceptional piece of legislation, would be justified in saying, "we are willing to give you the advantage of this law provided you consent to these terms, that you will not under this exceptional procedure enhance your rents at one leap more than 25 per cent." That was the object which induced MR. BELL to put this amendment upon the paper; but as he found that it had

been objected to by hon'ble members, whose opinions he was bound to respect, he would now ask permission to withdraw it.

The amendment was by leave withdrawn.

The HON'BLE MR. BELL moved the insertion of the following section after section 14*a*:—

"14*b*. Nothing in the above rules shall be held to entitle a zemindar or other landowner to an enhancement of rent upon any ground which he could not have urged in a civil court."

He said that though there had been an unfortunate difference of opinion both as to the expediency and the operation of these new rules, he was happy to say that there was one point on which they were all unanimously agreed, and that was that in a temporary measure of procedure like the Bill before the Council, they should make no change whatever in the substantive law of the land. But though such was the intention of the Council, he was afraid that when these rules came into operation Collectors would consider themselves bound by these rules alone, and that they were freed from the obligation of following the law as laid down in Act X of 1859. Now he was sure the Council would agree with him that it would be very undesirable, as well as a great calamity, if the Collector was to follow one law in his court and the Judge another law in his court. The result of such a system would be this, that if a zemindar found that the law as interpreted by the Collector was more to his interest than the law as administered by the civil court, all he would have to do would be to get up a little agrarian disturbance in order to bring in the jurisdiction of the Collector. The object of the amendment was to make the intention of the Council clear. It was, he believed, the unanimous intention of the Council that the substantive law should not be changed, and the object of the amendment was to make that intention clear, so that no Collector might misunderstand or misapply these new rules.

He would give only one illustration of the danger he apprehended in enacting these rules without the amendment he proposed. According to the present practice, no zemindar could enhance rent except on the grounds stated in the notice of enhancement. But he feared that if these rules were enacted in their present form, the Collector would not consider himself in any way bound by the notice, but think himself at liberty to decree an enhancement of rent on any grounds he pleased.

It was for these reasons that he thought it desirable that they should expressly state in the Bill that the Collector should not give the zemindar any enhancement of rent, except on grounds on which he could obtain enhancement if he had pursued the ordinary remedy in the civil court. These were the grounds which induced MR. BELL to give notice of this amendment, and for these reasons he asked the Council to agree to it.

The HON'BLE THE ADVOCATE-GENERAL said this was substantially a revival of the question which he had ventured to answer on the last occasion, when he had endeavoured to explain the difference between a ground of enhancement and the *ratio decidendi* involved in fixing the proper sum as an enhanced rent. In Section 13 of this Bill it was provided that "in the disposal of such suits the

Collector shall, as far as possible, follow the procedure prescribed in Act X of 1859." That being so, the grounds of enhancement must be the grounds of enhancement laid down in Act X of 1859, and that Act contained the grounds for the enhancement of rent as to occupancy ryots.

This Bill in no way interfered with the grounds of enhancement; and consequently he was unable to discover any reason for putting in this proviso in the shape of a rider. The grounds of enhancement contained in Act X of 1859 would continue to be observed as the only grounds for enhancement of rent under this Bill. He felt sure that the introduction of the proposed section would do no good, while it might in some way or other, at present unknown, interfere with the proper working of the rules; and the persistency with which the hon'ble member had opposed these rules did not incline the ADVOCATE-GENERAL to adopt an amendment, though apparently innocuous.

He had over and over again pointed out that these rules were not compulsory, but simply auxiliary, and that the Collector might or might not follow them as he thought fit. In fact, the words which were lately added were introduced for the purpose of giving perspicuity to these rules, and as the point of clearness had been attained, he certainly thought that the proposed amendment was altogether uncalled for, and in fact not needed.

He had endeavoured to explain on previous occasions the office of these rules, but unfortunately, whether in consequence of not rendering his remarks on the subject intelligible, or for some other reason, he had failed to convince the hon'ble member of the accuracy of his views. He would therefore repeat as a final attempt that the grounds of enhancement were quite distinct from the determination of the proportion in which that enhancement should be made. The grounds of enhancement were stated in section 17 of Act X of 1859, and were left unaltered by the present Bill. The rules were simply framed for the purpose of aiding the Collector in the event of his finding the rule of proportion unworkable. Any one who wished to satisfy himself of the necessity of some such rules might consult the last letter received from the British Indian Association, in which the question of the enhancement of rent and the unworkable character of the rule of proportion were treated in an able manner. For the above reasons he would vote against the amendment.

The HON'BLE MR. BELL said that he was surprised at the opposition raised to his amendment by his hon'ble and learned friend, because if the rules in the Bill were not opposed to the substantive law, there could be no harm in putting in this amendment. If, on the contrary, the rules were liable to be construed in a sense opposed to the existing law, then his amendment was absolutely necessary, in order that the intention of the Council might not be misunderstood. He was afraid, and was still afraid, that if these rules went out from the Council without the rider attached to them which he had suggested, the Collectors would consider that they were freed from the ordinary rent law. The hon'ble and learned Advocate-General had expressed his surprise that MR. BELL should persist in thinking that these rules were opposed to the substantive law, and he attributed this misconception of the rules to the fact that he had not on the previous occasion made himself clearly understood. But MR. BELL would assure his

hon'ble and learned friend that he had done himself a great injustice in thinking that he had not made himself clearly understood. His hon'ble and learned friend's interpretation of the law was clear enough, but it certainly was one with which MR. BELL could not agree. This, however, was not a question which he would wish to argue before the Council. His reason for bringing forward the amendment was not to dispute the position taken up by the learned Advocate-General, but merely to make the intentions of the Council so clear that no one could misunderstand them. If, however, it was the feeling of the Council that it was not advisable to add this rider to the rules, he would not press his amendment.

After some conversation the motion was by leave withdrawn.

On the motion of the ADVOCATE-GENERAL the Bill was then passed.

REGISTRATION OF ESTATES.

On the motion of the HON'BLE MR. BELL the Bill to provide for the registration of revenue-paying estates and revenue-free lands, and of the proprietors and managers thereof, was further considered in order to the settlement of its clauses.

The HON'BLE MR. BELL moved the omission, from the end of paragraph 1 of Section 55, of the words "accordingly, subject to any orders which may subsequently be made by any civil court." The words, he said, were unnecessary; any person could at any time bring a suit in a civil court to rectify an entry in the register. The motion was a purely formal one, which he would ask the Council to accept.

The motion was agreed to.

The HON'BLE MR. BELL said the next amendment he had to propose referred to certain new sections which had been introduced at the last meeting of the Council, namely sections 74, 77, and 78. It would perhaps be in the memory of the Council that these sections were introduced on the motion of Mr. Dampier for the purpose of protecting ryots who paid their rents to registered proprietors. The sections were framed by Mr. Dampier in consultation with the hon'ble and learned Advocate-General, but they were opposed by the hon'ble member opposite (Baboo Kristodas Pal), and many objections were urged against them. The principle of the sections was, however, affirmed on a division by a very considerable majority. After the Council rose, the Advocate-General suggested that MR. BELL should again go over the sections to see if he could propose any modification of them to meet the objections which had been raised. He accordingly consulted several gentlemen outside of this Council, and also the hon'ble member on his right (Mr. Reynolds), and the result was the amendment which he had the honor to propose. If the Council would refer to the sections they would find that their operation was two-fold; first, as they affected proprietors already in possession and entered on the register as registered proprietors; and secondly, as they affected applicants for registration whose claim to registration was disputed. It would be observed that there was a wide distinction between a proprietor in possession of estates and whose name was on the register, and persons who were not in possession and whose claim for registration was disputed.

The Hon'ble Mr. Bell.

With regard to proprietors already in possession, these rules seemed to MR. BELL to operate somewhat unfairly. Their effect was this. If a proprietor was in possession and was collecting rents without opposition from his ryots, these collections were liable to be summarily stopped by any person filing a petition to have his name entered on the register as proprietor. The mere application of a stranger for the registry of his name would in this way stop the collections of a registered zemindar who had been in possession for years. The object of this stringent provision was to protect the ryots from paying rent twice over. But it seemed to MR. BELL that when a person was in possession and his name was upon the register, he ought to be allowed to collect the rents until his name was removed from the register. Therefore what he proposed was this, that when a zemindar was in possession with his name upon the register, he should continue to receive rents from the ryots; and that his receipt for the rent should be a valid receipt, and an effectual discharge to the ryots from any demands which an adverse claimant might afterwards make upon him. If the claimant for registration substantiated his right to registration and possession, he would recover the rents which had been wrongfully withheld from him, not from the ryots who had already paid the rent, but from the zemindar who had received it. That was the ordinary course which was adopted when a man received possession with mesne profits. He therefore proposed to omit in Section 74 all the words after the word "Board" in line 7:—

"and to any extract so supplied shall be appended a note signed by the Collector certifying whether any application for registration under this Act in respect of the estate or revenue-free property to which the extract relates is pending before the Collector, or on a reference by the Collector before a civil court, and if any such application be so pending, specifying the extent of the interest to which such application relates, and the grounds on which it is based."

He proposed to omit this latter part of the section, which provided that the Collector was to note whether an adverse application for registration had been made. And he also proposed to omit the corresponding words in Section 78, after the word "mortgagee" in line 7:—

"unless an application for registration under this Act relating to the interest in respect of which such proprietor, manager, or mortgagee is registered is pending before the Collector, or on a reference by the Collector before a civil court."

The effect of omitting these words would be that every person who had his name on the register would be recognized, as far as the payment of rent by the ryots was concerned, as proprietor of the estate, until some other person dislodged his name from the register and obtained the substitution of his own name in its place. That was the first object of the amendments.

The next point was to consider the case of the claimant to possession and registration. If hon'ble members would turn to Section 55, they would find that it dealt with this question. Section 55 related to disputes as to succession. It very often happened that there was a dispute both as to succession to the estate and as to the share to which a person was entitled. It was perfectly impossible for the Collector summarily, without inquiry, to put any person

into possession. But it was not desirable, while these disputes were going on before the Collector and the civil court, that the rents should remain uncollected; for if the rents were not collected there might be no money from which to pay the revenue. The fear was that if the proprietor was unable to collect rents, he would be unable to meet the revenue. Therefore MR. BELL proposed that whenever there was a doubt as to who was entitled to possession, the Collector should have power to appoint a receiver, who would collect the rents and defray from the collections the expenses of management and the Government revenue; and any surplus that remained would be paid over to the person whom the Collector or the civil court might find to be entitled to registration.

MR. BELL thought that if these amendments were adopted by the Council the objections which had been raised by the hon'ble member opposite (Baboo Kristodas Pal) would be in a great measure removed. He thought it was reasonable to concede these amendments, and he believed that if they were conceded these provisions would be satisfactory to the zemindars.

The HON'BLE BABOO KRISTODAS PAL said he believed that a communication had been received from the British Indian Association in connection with these provisions of the Bill. He would ask the permission of the President to allow the Secretary to read the communication.

The communication, which was as follows, was then read by the Secretary:—

"Dated Calcutta, the 14th April 1876.

From—RAJA JOTENDRO MOHUN TAGORE, Hony. Secy., British Indian Association,
To—The Offg. Asst. Secy. to the Government of Bengal, Legislative Department.

WITH reference to the provisions in the Registration of Estates Bill introduced at the last sitting of the Council of His Honor the Lieutenant-Governor for making laws and regulations, declaring that no person shall be bound to pay rent to any person claiming such rent as proprietor, manager, or mortgagee of an estate unless the name of such claimant shall have been registered, the Committee of the British Indian Association desire to submit that these provisions (sections 77-78) are calculated to lead to the greatest hardship and injustice, and produce evils which are certainly not contemplated by the legislature, but which, they fear, cannot be avoided from the peculiar circumstances under which litigation is fostered in this country.

Although the declaration contained in section 77 is not intended to operate as a penal clause, practically it will have that effect; and it cannot but be most arbitrary and unjust that a proprietor should be outlawed even if he should fail to register his name, though the law provides sufficiently deterring penalty against such default.

But the Committee fear that the provisions under comment would rouse the evil passions of persons and foment disputes where there might have been none in existence. His Honôr in Council cannot be unaware that unscrupulous mooktears and other designing persons are too apt to take advantage of any law and sow seeds of disputes between members of the same family. The Committee would not be surprised if these sections should produce discord where there was harmony, and give a license to the strong to prey over the weak. For instance, an estate may be held by four persons, all of whom collect the rent separately; all of them are required by law to register their names and shares; they make the necessary applications; the more powerful of them may take a fancy to dispute the extent of the shares of the two weaker parties; the facility of procedure offered would operate as an encouragement to such mischievous proceedings; it may take some months

The Hon'ble Mr. Bell.

before the disputes are determined, but in the meantime the injured proprietors, though they were hitherto in the receipt of rent, would be deprived of the right of realizing it, while they would be bound to meet punctually their share of every instalment of the Government revenue to protect their property from sale.

Nothing could be more unreasonable or unjust than a provision of law which would produce such a result.

The evils apprehended from the new sections would be produced in a variety of ways. There is nothing in the Bill to show whether the rents of ryots due to a non-registered proprietor would be realized by any person or deposited in the Collectorate till the registration is completed; it is well known that when ryots fall into arrears it is difficult to realize them, and the practical effect would therefore be that though the rightful claim of the disputed proprietor might be established hereafter, he would be made a heavy loser through the operation of the law.

The Committee do not see how the object of the law could be frustrated or the ryots would suffer if it were provided, as indeed it was provided in the first amended Bill, that a proprietor, if he has filed an application for registration, shall be entitled to claim payment of rent and exercise other proprietary rights. Even if the proprietor whose application for registration might be pending should realize more than he was entitled to, there would be nothing to prevent either his co-sharers from suing him for excess collections, supposing that such excess should represent their shares, or the ryots from deducting the excess from their rents. If the proposed Bill does not contain any provision authorizing the ryot to make such deduction, that omission might be supplied without injury to either party.

The Committee would therefore recommend that section 77 be amended in the manner provided in the first amended Bill, that is to say, recognising the claim of the proprietor in possession, whose application for registration may be pending, to receive rent in the same manner as that of the other proprietors whose names have been duly registered. It would be seen that such a provision would not confer any new right upon the disputed proprietor; it would simply continue to him the power of collection which he had already possessed and exercised.

The object of the Committee in recommending the registration of the name of the mortgagee in possession was that, in case of default of revenue, notice might be served upon him in order to save the mortgaged estate from sale, owing to the laches of the mortgagor. But there is nothing in the Bill providing for the service of such notice. The benefit which His Honor the Lieutenant-Governor was pleased to hold out in the correspondence between the Government of Bengal and this Association on this subject would not thus be realized. The Committee would therefore urge the propriety of providing for the service of notice upon the mortgagee in possession, in case of the default of the mortgagor proprietor in the payment of revenue."

The HON'BLE MR. BELL said, as far as he understood the letter which had just been read, it related to two points. First, it related to the sections to which his amendment referred; and secondly, it related to the giving of notice to mortgagees in possession. He was not sure that the amendments he had proposed would meet the objections taken by the Association to sections 77 and 78; but he did not see his way to make any further alterations, because it had been decided at the last meeting of the Council that a mere application for registration should not entitle the applicant to sue for rent, and that indemnity should not be given unless the person receiving rent was registered as being in possession.

The HON'BLE BABOO KRISTODAS PAL said the hon'ble mover in moving his amendment had explained how the operation of the rules adopted at the last meeting of the Council would result in injustice and hardship. He had pointed

out that once a proprietor was registered, any claimant who might dispute his claim should not be allowed to intervene with the view of interfering with his right of collection, and that where there might be disputed succession a receiver should be appointed to collect the rents of the estate. The question raised in the letter of the British Indian Association was not, however, sufficiently met by the proposed amendments. The question was this: a proprietor might be collecting rents according to his recognized share, that was to say, as recognized by his co-sharers and ryots; now this Bill came into operation; the proprietor in the usual way made an application for the registration of his share. It was well known that in this country things when in train did not seem to attract much notice, but as soon as there was anything out of the way there would be disturbance. Well, as soon as an application was made for registration, some other person, who might have no right whatever, or who having a right might wish to take more than he was entitled to, might come forward and dispute the extent of interest of the applicant proprietor. He might dispute the right of the proprietor to a certain extent of interest, and advance his own claim to the rest of the estate. For example, if the proprietor held a four-annas share, the objector might allege that he had only a two-annas share, and that the other two-annas share belonged to himself. As the sections were framed, this four-annas proprietor, simply because his share was disputed by another co-sharer by a simple application to the Collector, and not by a regular suit, would be debarred from collecting rent under section 77, which provided that no person should be entitled to collect rent unless he was registered as a shareholder. This was a point on which difficulties would arise. It could not be said that a proprietor who had applied for registration was not entitled to be registered; but because some co-sharer had taken a fancy to dispute the extent of his share, he would be debarred of his proprietary right, and he would be obliged, if he wished to save his estate from sale, perhaps to borrow money to pay the Government revenue.

Baboo Kristodas Pal would mention one case which had been brought to his notice the other day. A large estate in the district of Nuddea was claimed by two persons, one of whom was the son of the deceased proprietor, the other was the son of the second son of the deceased. Each proprietor had an eight-annas share in the estate. One of them wanted to raise money on his eight-annas share, and he applied to a capitalist for a loan. A deed was executed, but the mortgagee asked the mortgagor to register his separate share in the Collectorate for the payment of revenue under Act XI of 1859, both with the view of protecting his own interest and the interest of the mortgagor proprietor. The mortgagor agreed, and an application was made by him in the usual way. His uncle, who also held an eight-annas share, now came forward and disputed the extent of interest of the applicant, claiming two annas more than he was entitled to. Things had been going on very smoothly before: both were collecting eight annas of the rents; there was no dispute. But the moment an application for the separation of the shares was made, one party came forward and disputed the extent of the share of the other party. It might therefore be easily imagined how this Bill would operate if it was passed with the sections adopted at the last sitting of

The Hon'ble Baboo Kristodas Pal.

the Council. There would be disputes, misunderstandings, and litigation, and honest men would suffer. He did not think the Council for a moment contemplated that this should be the result of the proposed law. The object of the new sections was to protect the interest of the ryots; but their indirect effect would be serious injury to the zemindar, whose share might be disputed on frivolous grounds by other co-sharers or even outsiders.

The hon'ble mover of the amendment had proposed the appointment of a receiver in cases of disputed succession; but how would the case be met when disputed possession was not in connection with succession? BABOO KRISTODAS PAL believed that the wording of section 55*a* would apply only to cases of succession. [The HON'BLE THE ADVOCATE-GENERAL.—The hon'ble mover is willing to amend the section: it was meant to apply to all cases.]

Then the only question left unanswered was this, that where a proprietor was in possession and had been actually collecting rents, and had, according to the law, filed an application for registration, but his application was disputed by some person with or without reason—Was this proprietor to be deprived of the right of collecting rents until the application was disposed of by the Collector or the civil court? Mind, he had not been guilty of any laches; it was not his fault that somebody else, tempted by the new law, disputed the extent of his share; possibly his whole claim would be admitted after hearing by the Collector or the court; but if he were debarred of the right of collection on the ground of some objection filed by a third party, he would possibly not be able to realize the rents, which would at once fall into arrear; while he would have to meet the Government revenue from his own pocket, not to say that he must find other means for his own maintenance.

The HON'BLE THE ADVOCATE-GENERAL observed that the hon'ble member was assuming that the applicant was in actual possession; if he was so, he would be registered: the mere allegation that he was not in possession would not prevent him from being registered. Moreover, under the last clause of Section 55, if there was any *bonâ fide* doubt as to the extent of interest, the applicant might be registered as to the extent of interest which might be proved, and might make a reference to the civil court as to any further extent of interest which might be in dispute.

After some conversation the following section was introduced after Section 55, and the amendment moved in Section 78 was agreed to:—

"In any case of disputed possession of, succession to, or acquisition by transfer of the extent of any interest in respect of which application is made under the last preceding section, the Collector may appoint a receiver to collect the rents of the extent of interest in dispute, and from the sums so collected shall be paid the expenses of management and the revenue due to the Government; and the surplus shall be held in deposit in the Collector's treasury and shall be paid over to the person who shall be registered by the Collector or under the order of the civil court in respect of the extent of interest in dispute."

The HON'BLE MR. BELL said the only question that remained to be considered in regard to this Bill was the proposition that had been suggested to the Council that day, that mortgagees whose names were registered as being in possession should receive notice when default in the payment of revenue had

occurred. With regard to this matter he wished to state that a promise had been made in Select Committee to the hon'ble member opposite (Baboo Kristodas Pal) by Mr. Dampier and himself that they would, if possible, draft sections to carry out what they understood to be the intention of His Honor the President in this matter. But when they came to put their sections into writing, they found that they would materially interfere with the sale law of the country; and it was objected by the hon'ble member on his right (Mr. Reynolds) that such a provision was foreign to the scope and object of the Bill. And this objection was undoubtedly a very reasonable one. Moreover, it appeared both to Mr. Dampier and himself that it would be in the power of the Executive Government by an executive order to require Collectors to give notice to registered mortgagees before the mortgaged estate was sold. Such an order would answer every purpose, and it could be made without in any way interfering with the sale law. For these reasons MR. BELL did not consider that the provisions which the British Indian Association asked should be introduced into the Bill were required.

The HON'BLE BABOO KRISTODAS PAL said he might remind the Council that when the section for the registration of the names of mortgagees in possession was introduced, the object was to protect the interest of such mortgagees. The mortgagor proprietor might default, and the estate might be sold without the knowledge of the mortgagee in possession; and it was with the view of preventing injustice to the mortgagee that the Government decided that the name of the mortgagee should be registered under this Bill; but the remedy provided, unless the proposed notice to the mortgagee in case of default were given, would be incomplete. It was true that the remedy sought for might be given by executive order of the Government, but an executive order was liable to reversal; and although His Honor the present Lieutenant-Governor might issue such an order, who knew whether his successor might not be of a different opinion and withdraw the order? With a view, therefore, to give permanence to the remedy proposed by the Government, he thought it would be consistent and advisable if a section were introduced authorizing the Collector to give notice in case of default by the mortgagor proprietor to the mortgagee in possession, requiring him to pay the Government revenue and protect the property from sale. He would therefore move the introduction of a section requiring the Collector to give notice by registered letter to a mortgagee, whose name had been registered, in case of default of revenue by the mortgagor proprietor.

The HON'BLE THE ADVOCATE-GENERAL observed that the principal objection to requiring notice to be given by law was that, under the existing sale law the Commissioner, under the direction of the Board of Revenue, might annul a sale on the ground of hardship or injustice; and if notice was required to be given by law, he had little doubt that, in cases of revenue sales, the supposed omission or improper service of notice would be eagerly seized as a ground of hardship to be insisted on; and thus a disturbing element would be supplied by the legislature in cases of revenue sales, which, under the policy of the law, should be made as free as possible from objections of the nature alluded to.

The Hon'ble Mr. Bell.

The HON'BLE MR. REYNOLDS said he did not think the proposal of the hon'ble member would do any great good, because, as he understood it, the proposal was to leave it optional to the Collector to issue these notices. Where it was to be a matter of discretion, he did not see that a law was necessary to authorize the Collector to give notice of sale to mortgagees in possession.

After some conversation the motion was negatived.

On the motion of the HON'BLE MR. BELL a formal amendment was made in Section 79, corresponding to that made in Section 78.

HIS HONOR THE PRESIDENT said—"The next motion on the list is that the Bill be passed; but before that is done I am anxious to draw the attention of the Council to Section 63, relating to fees. It will be seen that Section 63 gives the Lieutenant-Governor power to fix the rates of fees for changes on the registers, provided that no one fee shall exceed one hundred rupees; and it said that "all fees levied under this section shall be expended in such manner as the Lieutenant-Governor may think fit." It was found necessary to refer this section, under the Indian Councils' Act, for the sanction of the Governor-General. We did so some time ago; but we have not yet received the sanction, and I am not certain that we shall receive sanction, because this section virtually alienates by law certain fees or duties which are now levied and credited to the general account of the Government. If hon'ble members will refer to Regulation XV of 1797, from which this section is taken, they will find that this Section, 63, relating to fees, is taken from sections 3, 6, and 9 of Regulation XV of 1797. Section 3 of that Regulation says:—

"Fees at the following rates shall be levied by the Collectors on the registry of any transfer of the whole or the part of an estate or estates, or lands held exempt from the payment of revenue, by deed of sale, or gift, or otherwise:—

"If the estate shall be subject to the payment of revenue to Government, one quarter or four annas per cent. on the annual jumma or revenue payable to Government from the property transferred.

"If the lands shall be held exempt from the payment of revenue to Government, two and a half per cent. on the amount of the annual produce of the lands transferred."

The Regulation lays down two rates, one for revenue-paying estates, and one for revenue-free lands; while our proposed Section 63 gives the Lieutenant-Governor power to fix the rates, provided that no fee shall be more than Rs. 100. This limitation is taken from Section 6 of the same Regulation, which provides that no person shall be liable to the payment of a greater sum than Rs. 100 on account of any transfer. Then Section 9 of the Regulation says that all sums which may be received by the Collectors under the Regulation shall be carried to the account of Government; our section says that all fees levied under the section shall be expended in such manner as the Lieutenant-Governor may think fit.

The necessity for making a reference to the Governor-General arises from the fact that our Section 63 makes certain changes in the rates and disposition of the fees. Our section gives the Lieutenant-Governor power to fix the rates, whereas the old Regulation lays down the rates; and secondly, our section gives the Lieutenant-Governor the power of expending the money as he thinks fit,

whereas the old Regulation says that the Collector shall carry the fees to the account of Government. If we were simply to re-enact the sections which I have read, sections 3, 6, and 9 of Regulation XV of 1797, there will be no necessity for a reference to the Governor-General, and we can then pass the Bill. If that should be the pleasure of the Council, then I, for one, would desire to state that I see no objection to that course; because, assuming that the Government of India shall be willing to allow the Lieutenant-Governor to expend the fees as he thinks fit, there is nothing to prevent them from allowing the Lieutenant-Governor to do so by executive order. Therefore I shall be content if the exact words of the Regulation are adopted, and I believe that the native members of the Council would prefer that course, as being more favorable to zemindars."

After some conversation the following section was substituted for Section 63:—

"Fees at the following rates shall be levied by the Collector on the registry under this Act of any transfer:—

(1) in the case of revenue-paying lands, one-quarter or four annas per centum on the annual revenue payable to Government from the extent of interest transferred;

(2) in the case of revenue-free lands, two and a half per centum on the amount of the annual produce of the extent of interest transferred:

provided that no fee for the registry of any one transfer shall exceed one hundred rupees.

"Such fees shall be levied from the person in whose favour the transfer is registered.

"All fees levied under this section shall be carried to the account of Government."

On the motion of the HON'BLE MR. BELL the Bill was then passed.

The Council was adjourned *sine die*.

Monday, the 24th April 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL.
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVIE MEER MAHOMED ALI,
and
The Hon'ble W. SPINK.

STATEMENT OF THE COURSE OF LEGISLATION.

HIS HONOR THE PRESIDENT said,—"Hon'ble members will perceive from the notice on the paper that we are met together to-day in order that I may

His Honor the President.

make a very brief statement regarding the course of legislation in this Council. During the last few months we have had very many meetings of the Council, and the meetings of the Select Committees have been still more numerous, so that, one way or another, hon'ble members have had a great deal of legislative work; and as it is now proposed that we should have a short respite from our labours, I have deemed it desirable to recapitulate in the very briefest terms the results of those labours during the last few months, and also to remind hon'ble members of the work which still lies before us. Now, if hon'ble members will refer to the statement I had the honor of making in this Council on the 13th November last, they will find that there was laid before them what might be termed a heavy programme of legislation. Well, I am happy to be able to say that in all its most essential parts that programme has been fulfilled.

In the first place there were mentioned measures for the voluntary registration of Mahomedan marriages and divorces; also for providing for irrigation from canals in the provinces under the Government of Bengal. Both these measures have been passed into law, and I hope they have begun to take due effect.

But further, there were two very difficult measures relating to municipal affairs—one relating to the municipality of Calcutta itself, and the other relating to the numerous municipalities in the interior of Bengal. The measure relating to the municipality of Calcutta has, as the Council knows, been passed into law, and I am sure that our hon'ble colleague Sir Stuart Hogg will carry this law into effect with the same patience, discretion, and ability with which he carried the Bill through the Council.

The other law relating to municipalities in the interior of Bengal has also passed this Council.

But besides the measures relating to municipal affairs, there were four very important and heavy measures relating to the landed interests in the country. The first of these was a Bill for making better provision for the partition of estates paying revenue to Government; the second was a Bill relating to the compulsory registration of possessory titles in land; the third was a Bill for inquiry into the rents payable by ryots in certain cases and for the prevention of agrarian disturbances; and the fourth was a measure for the appointment of managers in joint undivided estates. Of these four measures, the first three have passed the Council. The fourth measure, namely the measure for the appointment of managers in joint undivided estates, has not yet been brought before this Council; and for this reason, namely that such improvements have been introduced into the measure for the registration of possessory titles in land, that we hope that it will not be necessary to introduce the fourth measure at all. Sections, as hon'ble members will recollect, have been inserted in the Registration Act which will give a great deal of protection to ryots against the liability of their being called upon to pay their rent more than once upon the demands of conflicting shareholders, and if these sections shall have good effect, which we hope they will have, it may not be necessary to provide for the appointment of managers in these joint undivided

estates, especially as we understand that the appointment of managers is not likely to be satisfactory to zémindars generally, and I believe in some cases it is likely even to prove distasteful to them. So I hope that if the Registration Act shall work as well as we hope it will work, we shall be saved the necessity of proposing a Bill for the appointment of managers for the consideration of the Council.

Well, then, it appears that we have passed no less than seven measures within this last session, that is, since November last, of which perhaps two were not very difficult; but the remaining five have been measures of first rate difficulty.

Then there were other measures mentioned in the statement of the 13th November, which I will call to the recollection of the Council. They were improvements of the Sale Law, that is, the law for the sale of estates in default of payment of land revenue; the amendment of the General Police Act; the prohibition of illegal cesses in navigable channels, high roads, and market places; the consolidation of the Acts relating to the Abkaree or Excise Law; the alteration of the Rent Law in the Chutia Nagpur Province. Well, of these, the Bill for a few detailed improvements in the Sale Law has been dropped; it was not found necessary to proceed with it, as all the improvements it could be expected to produce were within the scope of executive authority. The proposal for the amendment of the General Police Act was, as hon'ble members will recollect I informed them, referred to the Government of India, because whatever is done here might affect neighbouring provinces. But I regret to say that we have never yet received a reply, so I am not in a position to say whether or not we shall be able to produce any measure on this subject. The Bill for the prohibition of illegal cesses in navigable channels, high roads, and market places, after receipt of the reply of the British Indian Association to the reference made to them, was referred to the Government of India. To that reference no reply has yet been received. The consolidation of the laws relating to Excise or the Abkaree has, as the Council will recollect, been partially proceeded with by our learned Secretary; but hon'ble members will readily understand that for the last few months he has been very much absorbed in the current business before the Council, and it has not been possible to make very great progress with that measure, which indeed is of no urgent importance. But as the coming period is comparatively one of recess, it is possible some progress may be made with this matter. The measure for the alteration of the rent law in the Chutia Nagpur province has been referred to the Commissioner of that province with reference to several practical details, and no reply, at least no final reply, has yet been received. But, however, that Bill will not be one of any great length or difficulty.

These are the remarks I have to make in reference to the last general statement I submitted to the Council in November last. I have yet to add a very few remarks on the measures which have yet to be mentioned for the first time. In the first place there are some improvements in the law for the management of estates under the Court of Wards, which the Board of Revenue

His Honor the President.

consider very desirable. It is possible that we shall prepare a short measure for submission to the Council. Then we have to produce before long a measure regarding ghatwali tenures in parts of the Burdwan, Bankoora, Midnapore, Manbhoom, and Singbhoom districts. That measure is under immediate consideration, and I hope that before long it will be sufficiently worked out to enable us to submit it to the Council. Then it has long been thought desirable to consolidate into one law the various regulations relating to the land revenue. I dare say the Council are aware that for a long time past measures have been taken in the Legislative Council of the Governor-General for the repeal of obsolete enactments. Now this frequent repealing of obsolete enactments has swept away a good many of the old regulations, and it is now believed that the remaining regulations regarding land revenue in these provinces are comparatively few in number, and that it would not be very difficult to consolidate them all into one enactment, which may be passed by this Council, and if passed, will give to all our Revenue officers, and perhaps what is of more importance, to all those great interests which are concerned in this matter, the great boon of a short and available manual to which every one may refer for authoritative guidance in these affairs. Then lastly, the Government of Bengal has had under its anxious consideration the possibility of preparing some rules and enunciating some principles by law for the determination of rents in disputes between landlords and tenants. There are several hon'ble members present who are peculiarly conversant with this question, and will therefore readily understand the great difficulties which surround it. But it is our hope that we may be able to lay before the public, and before those great interests which are concerned, some proposals which may be found to be just to both parties,—that is, to both landlords and tenants; and if we are able to frame proposals which shall be tolerably acceptable to both parties, it is our hope that before long we shall be able to submit some definite measure upon the subject for the consideration of the Council.

Such, then, are the remarks which I have to make upon this occasion. I wish that our hon'ble colleague Mr. Dampier could have been present to-day, as we all know how much we owe to him for the undivided attention which he was able to devote to the business of the Council. But it will be in the recollection of hon'ble members that on the last day he sat here opportunity was duly taken to record the sense which I am sure we all entertain of the great benefit which we derived from his presence among us. But I deem it desirable upon this occasion to acknowledge before all hon'ble members the great obligations we are under to our learned Secretary for the great legal knowledge and acumen as well as for the great industry and attention which he has displayed throughout this somewhat difficult session. And I cannot conclude this statement without declaring to the Council my strong impression of the careful, searching, and elaborate manner in which the business of the Council is conducted by all hon'ble members generally, and especially by those hon'ble members who sat on select committees.

The Council was adjourned *sine die.*

Saturday, the 22nd July 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVIE MEER MAHOMED ALI,
and
The Hon'ble W. SPINK.

REGISTRATION OF ESTATES.

THE HON'BLE MR. BELL said, the Bill which he had now the honor to ask for leave to introduce was substantially and verbally the same as the Registration Bill which occupied so much of their attention during the past session. Hon'ble Members would recollect that the Bill underwent very great discussion both before the Select Committee and before the Council, and it was therefore, he thought, quite unnecessary that he should enter into the principles of the Bill, or the objects for which it was introduced. There was, however, one very gratifying incident in connection with this Bill which he might mention. It was a Bill which in almost all its details had met with the general support of the Council, and it was finally passed by the unanimous vote of the Council on the 15th of April. It then received the assent of the Lieutenant-Governor, and was forwarded, in the usual course, for the consideration of the Governor-General in Council. Hon'ble Members would, Mr. Bell was sure, be gratified to hear that His Excellency in Council fully approved of the scope and object of the Bill. But His Excellency had been advised that he was unable to give his assent to it because one of the sections of the Bill conflicted with one of the provisions of an Act of the Governor-General's Council passed in 1870. Hon'ble Members would recollect that this Council had no power to alter, to amend, or to modify any Act of the Governor-General's Council which was passed since 1862. Therefore, if that section did in any way amend or modify any provision of the Act of the Governor-General's Council passed in 1870, it was clearly *ultra vires* of the Council. The section to which exception was taken was section 80. Whenever a sum of money was payable by the Collector to a number of proprietors, that section allowed the Collector to distribute the sum amongst the several proprietors according to the shares which were recorded in their names in the general register of estates. Now, that section was supposed to conflict with

a section in the Land Acquisition Act (XXXVIII), which required Collectors, whenever money was payable to zemindars under that Act, and when there was any dispute regarding the distribution of the money, to refer the matter in dispute for the decision of the Land Acquisition Court. Suppose, for instance, that the Government took up a piece of land for some public purpose of which there were four zemindars recorded as proprietors. If the Collector was to act under the Registration Bill, he would distribute the money to the four zemindars according to the shares recorded in their names in the general register. But if the zemindars disputed amongst themselves the extent of their several shares, the Collector would be acting in opposition to the Land Acquisition Act, because in such cases, in cases of dispute, the Collector, instead of distributing the money himself, was bound to refer the matter for the determination of the Land Acquisition Court; and that was the point upon which the two Acts were supposed to conflict. MR. BELL might observe, as the member of the Select Committee at whose suggestion, he believed, section 80 was inserted in the Bill, that it was no part of their intention, when section 80 was drafted, that it should in any way supersede, alter, or modify any section of the Land Acquisition Act. The object of section 80 was this. It very often happened that an estate was sold for arrears of revenue, and after the arrears had been discharged, a considerable surplus was left in the hands of the Collector to be distributed amongst the proprietors of the estate. But unfortunately at present the Collector was unable to make the distribution, because, in the first place, he did not necessarily know who the proprietors were, and if he knew the names of the proprietors, he did not know the respective shares which those proprietors held in the estate. And the consequence was this, that the Collector, instead of being able to distribute the surplus of the sale proceeds amongst the proprietors at once, was obliged to refer the proprietors to the Civil Court. This was a great hardship on the proprietors. Instead of getting the money without litigation, they were forced to the expense and delay of a civil suit, in order that they might obtain an order of the court declaring them entitled to the money. It was principally to remove inconveniences such as these that the section was passed. He need hardly observe that it never entered into the conception of the Select Committee, when they inserted this general provision in the Bill, that they were doing anything in the way of altering or modifying the Land Acquisition Act. That Act was a special Act regarding a special subject, with which the Registration Bill had no concern. However, it had been thought by the Government of India that this section did conflict with section 38 of the Land Acquisition Act, and it was therefore the duty of the Council to alter the Bill in such a manner that the objection taken by the Government of India should be removed. The manner in which it was proposed to make the alteration was this. In section 80 we proposed to insert the following words:—"otherwise than under the Land Acquisition Act, 1870." The section would then run as follows:—

"Whenever any sum of money shall be payable by the Collector to the proprietors of any estate or revenue-free property jointly, (otherwise than under the Land Acquisition Act, 1870,) the Collector may pay," &c., &c.

The Hon'ble Mr. Bell.

Therefore, by putting in the words "otherwise than under the Land Acquisition Act, 1870," it would make the intention of the Council clear that there was no desire to alter, amend, or in any way modify the provisions contained in the Land Acquisition Act, 1870. This alteration would remove the main reason why the Governor-General considered himself compelled to withhold his assent to the measure.

There was, however, another objection which had also been taken, and that related to section 68 of the Bill. It had been supposed that section 68, as it stood, might be held to conflict with section 90 of the Code of Criminal Procedure; and to meet this objection a similar alteration had been made in section 68, to which the following words had been prefixed:—

"Save as is provided in section 90 of the Code of Criminal Procedure."

With these exceptions, the Bill which he had now the honor to submit was verbally the same as the Bill passed by this Council on the 15th April last. He did not think it at all necessary to detain the Council by making any further observations on the Bill. It had been so fully discussed on the previous occasion when it was before the Council, that he would without further remarks move the motion that stood in his name.

The motion was agreed to.

The HON'BLE MR. BELL applied to His Honor the President to suspend the rules for the conduct of business, to enable him to carry the Bill through its subsequent stages.

THE PRESIDENT having declared the rules suspended—

The HON'BLE MR. BELL moved that the Bill be read in Council.

The motion was agreed to, and the Bill read accordingly.

The HON'BLE MR. BELL moved that the Bill be passed.

The motion was agreed to and the Bill passed.

The Council was adjourned *sine die.*

Saturday, the 19th August 1876.

Present:

The Hon'ble V. H. SCHALCH, C.S.I., *Presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVIE MEER MAHOMED ALI,
and
The Hon'ble W. SPINK.

PARTITION OF ESTATES.

THE HON'BLE MR. REYNOLDS moved for leave to bring in a Bill to make better provision for the partition of estates. He said, hon'ble members would recollect that among the measures which engaged the attention of the Council last session was a Bill to make better provision for the partition of estates, and that Bill was very fully discussed in the Select Committee and in this chamber, and it was eventually passed by the unanimous vote of the Council on the 8th April, and was then submitted in due course for the approval of the Governor-General. His Excellency, however, was unable to give his assent to the Bill, and his objection was based on the provision embodied in section 11 of the Bill as passed. That section was introduced in order that the law of butwara might not be used so as to produce an excessive multiplication of petty estates, and with this object it was provided that no partition should be allowed if the separate estate of the applicant would be liable after partition for an annual amount of land revenue less than Rs. 20, and if the assets of the estate would be less than Rs. 200, until the proprietor of such estate agreed to redeem the amount of revenue for which his estate would be liable. The Governor-General had pointed out that the principle embodied in this section was opposed to the course which had been prescribed by the Secretary of State on the question of dealing with the redemption of the land revenue. With the permission of the Council he would read out those passages of the letter of the Government of India which referred to this part of the Bill:—

"Sections 11 and 13 of the Bill contemplate the redemption of land revenue in the following cases:—

"(*a*) Where the separate estate of the applicant for partition would, if partitioned off, be liable for an annual amount of land revenue less than Rs. 20.

"(*b*) Where, in consequence of the lands to be partitioned off being intermingled with those held by other proprietors, 'the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land revenue.'

"But redemption of the land revenue in these cases is opposed to the Secretary of State's (Sir Charles Wood's) despatch No. 14, dated 9th July 1862, paragraphs 26 and 63 of which lay down the rule that redemption of land revenue is only to be permitted 'at the discretion of local Governments, so as to include lands required for dwelling-houses, factories, gardens, plantations, and other similar purposes.'

"In the letter to the Government of Bengal from the Financial Department, No. 3254, dated 29th November 1873, the redemption of the revenue of petty estates in Bengal was allowed, and the rate of such redemption was fixed at twenty-five times the annual payment to be redeemed. But these petty estates were understood to be estates paying less than one rupee as annual land revenue, an amount so small that its collection entailed an expense which the sums collected were insufficient to cover.

"His Excellency cannot therefore sanction an extension of the permission to redeem land revenue such as is contemplated by the sections of the Bill above-mentioned, and he considers that there are, especially at the present time, grave objections to any such extension.

"His Excellency has, however, no objection to the redemption of land revenue being confined to holdings so minute in Bengal as to pay annually not more than one rupee of Government revenue, but only where the revenue is fixed in perpetuity, not in Orissa or any other temporarily-assessed tracts."

He thought it would be clear to hon'ble members from these passages exactly what the objection of the Supreme Government was, and it would also be clear that there were two ways in which the objection could be removed: first, the former part of the section might be allowed to stand as before, and the concluding clause, which referred to the power of redemption, might be struck out; or else, secondly, the limit down to which partition should be allowed might be reduced to one rupee, and it might be provided that no partition should be allowed if the separate estate of any of the proprietors after partition would be liable for an annual amount of land revenue less than one rupee, until the proprietor of such separate estate agreed to redeem. Now, the effect of adopting the former of these alternatives would be that a partition which would result in the formation of an estate with a revenue of less than Rs. 20 would be absolutely prohibited; and in the opinion of the Government of Bengal it was not desirable that such a prohibition should be enforced by law. There might be inconveniences connected with the multiplication of petty estates; but it had always been conceded that landed proprietors had a right to have their estates divided if they chose to demand partition, and the Government did not consider that that right should be abrogated or denied to them. Accordingly, in the Bill it was proposed to adopt the second of the alternatives to which he had referred, and to allow partition to be carried out down to the limit of one rupee, with power to the landholder to redeem in case the land revenue after partition should be less than one rupee. This provision would only extend to permanently-settled estates; and in the letter which had been read, it would be observed that the power of redemption was not to extend to Orissa or other temporarily-settled tracts; and consequently in those tracts the power of partition would remain as hitherto, and the owner of an estate, however small, would be entitled to have his share separately divided off.

It was of course an open question whether the inconveniences which would result from the excessive multiplication of small estates ought not to outweigh

other considerations. But he trusted the Council would accept the view taken by the Government, that this right was one which the Government was to a certain degree pledged to allow to landholders; that it was a right they had always exercised, and a right which ought not to be taken away. Under the amended Bill any proprietor, however small his share might be, would have a right to have his property separately divided.

The only other alteration besides that in section 11 was a verbal alteration in section 13, striking out some words relating to redemption. This was made necessary by the acceptance of the principle in the Bill which he had spoken of before.

He had now to move for leave to bring in the Bill.

The motion was agreed to.

The HON'BLE MR. REYNOLDS then applied to the President to suspend the rules for the conduct of business, to enable him to carry the Bill through its subsequent stages.

THE PRESIDENT having declared the rules suspended—

The HON'BLE MR. REYNOLDS said, in speaking to the next motion, he desired to refer briefly to a memorial put into his hands a few minutes ago from certain inhabitants of Calcutta and its suburbs, objecting to the course of business in this Council as shown in the notice paper. It appeared in the first place that the memorialists objected to the rules being suspended, and a measure being brought forward and passed at a single sitting. On that point MR. REYNOLDS thought the Council was the best judge of the propriety of its own proceedings.

There was a further objection taken, that the grounds on which the Governor-General had withheld his assent from the Bill had not been published to the general public, and it was remarked that the "exercise of the veto was such a rare and at the same time important exercise of the Viceregal prerogative, that, apart from the merits of that particular measure, it was necessary, in the interests of the public, that the reasons which induced the Viceroy to withhold his assent from a Bill passed by a local legislature should be made public *in extenso*." Now, those remarks seemed to be based on some misapprehension of the course of legislative business. They seemed to assume that whenever the Viceroy found it necessary to withhold his assent, he did so because he felt some objection of principle to the general tenour and scope of a Bill. Whereas hon'ble members were aware that it was sometimes necessary for the Viceroy to withhold his assent on a minor and purely technical point of detail, which did not involve the principle of the Bill, as had been the case in the Registration of Estates' Bill, and was the case in the Bill now before the Council.

Then the memorialists went on to say that the grounds on which the measure did not receive the assent of the Governor-General ought to be published in the proceedings of the Council for general information. This objection was met by Mr. Reynolds' having read out the letter of the Government of India when he asked leave to introduce the Bill. He thought that with those remarks it would be sufficient now to move that the Bill be read in Council.

The HON'BLE BABOO KRISTODAS PAL asked whether section 11 as it now stood would affect the executive order of Government permitting the redemption of the land revenue in Dehee Panchanogram, Calcutta, Chinsurah, and like places, where, hon'ble members were aware, by executive order of Government, the land revenue might be redeemed by the payment of twenty-five times the annual revenue.

The HON'BLE MR. REYNOLDS explained that this Bill would not in any way affect the order referred to.

The motion was then carried and the Bill read accordingly.

The HON'BLE MR. REYNOLDS then moved that the Bill be passed. He said that if the Bill in its amended form had introduced any restrictions or any limitations of the power of landlords to obtain partition, there might have been some sufficient ground for asking that further time for consideration should be given before the Council was asked to come to a final vote upon the measure. But as it was, he thought hon'ble members would agree with him that the amendments introduced had been of such a kind as to make it unnecessary to delay the passing of the Bill. He had therefore the honor to move that the Bill be passed.

The motion was agreed to and the Bill passed.

The Council was adjourned *sine die*.

Saturday, the 4th November 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble SIR STUART HOGG, KT.,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVIE MEER MAHOMED ALI,
and
The Hon'ble W. SPINK.

STATEMENT OF THE COURSE OF LEGISLATION.

HIS HONOR THE PRESIDENT said:—With the permission of the Council I will proceed to make the statement mentioned in the notice paper regarding the course of legislative business during the ensuing session. I will ask the Council to advert for a moment to the statement which I had the honor of making on the 24th of April last. That statement reviewed the work of what I believe has been the most laborious session that has ever occurred since the constitution of this Council. Well, since that statement was made we have been so fortunate as to receive the assent of the Governor-General to several of the most important Acts which were passed. These are the Acts which relate to mofussil municipalities, to the prevention of agrarian disturbances, to the registration of possessory titles in land, to the partition of joint undivided estates. It will be remembered of course that the Act relating to the Municipality in Calcutta had received the assent of the Governor-General just before my statement was made. So much, then, for the session that has passed.

Well, now for the session about to begin. I will first remind the Council that there are two measures which have been repeatedly mentioned in this Council chamber which we have decided to abandon. The first of these is a measure relating to the appointment of managers in joint undivided estates; the other is a measure relating to the organization of the regular police. The first measure, relating to the appointment of managers, the Council will recollect, is rendered unnecessary by the introduction of a section which has been introduced into the Land Registration Act. The Bill relating to the organization of the regular police has been abandoned in consequence of objections raised by the Government of India as to the questions being aired just now in Bengal which might apply to all other parts of India. So that these two measures must be considered as finally struck off from the list of pending business before the Council.

I will now refer to the measures mentioned in my last statement as likely to come on in the ensuing session. Regarding these we shall now ask leave to introduce Bills into this Council. The first of these is the measure for the prohibition of illegal cesses in navigable channels, high roads, and market-places. This measure has been before the Government of India, by whom various objections have been raised and modifications proposed, most of which, I apprehend, the Council will accept. There is still some correspondence pending, on the completion of which I hope we shall be in a position to ask the Council's leave to introduce a Bill. Then there is the consolidation of the law regarding excise: on that subject we shall to-day, I hope, obtain leave to introduce a Bill. Then there are some amendments in the law regarding rent in the Chota Nagpore province. These amendments do not involve any principle at all affecting the great provinces of Bengal and Behar; they are of a purely local character. Then there are some amendments required in the law relating to the Court of Wards. Our hon'ble colleague Mr. Schalch, who is a Member of the Board of Revenue, considers these amendments necessary, and I have no doubt leave will be given to introduce a Bill on the subject. Then there is a Bill for defining the status of certain ghatwalee tenures in the Bankoora district. This is a matter which was mentioned during the last session. I have since had the advantage of visiting the district, and examining the papers and correspondence on the subject, in conjunction with the local authorities, and our hon'ble colleague Mr. Bell will ask leave to introduce a Bill. Then there is the consolidation into one law of the existing regulations relating to land revenue. This is a subject on which some papers have been published, and I hope there will be no difficulty in embodying the whole of the existing laws into one code. I hope at the same time, however, it will be understood that the object is purely one of consolidation. The proposal is merely this, to allow our revenue officers, our landed proprietors, and all the various persons who are concerned, to have a manual in their hands to which they can readily refer. At present the law and regulations regarding the land revenue are scattered over a very large number of enactments, some sixty or seventy, which have been passed at various periods, often after long intervals of time, and many of which are often difficult to find when wanted. My hope is that we may be able to place all these laws and regulations together into one combined shape; and that is the purpose, and nothing more. It is not contemplated to alter the existing law regarding the land revenue, nor to raise any new questions, nor to re-open any questions which may have been settled by recent legislation. Of course it is open to any member of the Council to make any motion regarding this legislation which he sees fit. But I am anxious to explain to the Council the limited and restricted character of the purpose with which we propose to bring this measure before the Council.

Then there are certain new measures which have never yet been mentioned in the Council, and to which I will briefly advert. These are—a project of law for giving legal effect to the determination of rents by settlement officers in estates belonging to, or under the management of Government. It

repeatedly happens now-a-days that very extensive settlement operations are undertaken by highly paid officers acting in a quasi-judicial capacity, proceeding upon elaborate surveys and local inquiries on the spot; and when all these settlements have been done, and apparently the thing has been decided for a considerable term of years, the whole matter is re-opened by some suit in a Moonsif's Court. This appears nothing more than doing the work twice over, and protracting disputes which we had hopes of settling for a long time. The desire is to give judicial effect to these decisions. Whatever disputes, whatever litigation, is to be carried on, should be carried on once for all before a responsible officer, and after that there should be no more re-opening of the question than is allowed in all cases of ordinary appeal. We have submitted a measure to that effect to the Government of India, and have been requested in reply not to proceed with it until the orders of the Secretary of State shall be received regarding the Bombay Revenue Jurisdiction Bill; and that is the precise position in which this measure stands at this moment. Then there is a project of law for giving the power of enforcing sanitary inspection among the scattered hamlets in the Darjeeling hills. I dare say you have heard that there have been visitations of cholera, carrying off many labourers and other persons. It was brought on no doubt by the want of sanitation. We find that the existing law does not give sufficient power of inspection, and it may be necessary to ask the legislature to give such power,—some power in these hill villages as in ordinary municipalities in the plains,—for the purpose of preventing insanitary conditions to arise which are prejudicial to human life and health. Then there is a proposed Bill for alterations in certain sections of the Road Cess Act, which are applicable to waste land tenures,—tenures of land granted under the waste land rules. When we come to apply the law to these tenures, we find there are doubts as to the exact interpretation of certain provisions of the Road Cess Act. And if we attempt to amend these sections, there may be one or two other alterations which the Board have suggested likely to be wanted.

Such is the general programme. But to this programme, the Council are well aware, must be added the last, but by much the greatest item, namely, the Bill for the amendment of the substantive law regarding the determination of rent in the provinces of Bengal and Behar. I must ask the attention of the Council for a few minutes to this matter, which I venture to think is one of the most important that can possibly be brought before the Council. Now, regarding this measure I will remind the Council that on the 18th April last I ventured to place before the public of Bengal certain proposals for the improvement of the law in this matter. These proposals were extensively circulated both in official and non-official quarters. We received a great number of valuable replies, which may perhaps be considered to constitute a sort of literature on the rent question. These papers have been or will be printed and placed at the disposal of the Council; and I venture to think a more instructive and valuable set of papers has seldom been presented to the local legislature. I think it will be found that the knowledge and ability displayed by so many gentlemen is highly creditable to the public service in Bengal. I particularly recommend, to those who are inclined to read these papers, the letters received

His Honor the President.

from the Commissioners of the Presidency Division and of Dacca; also from the Collectors of Rungpore, Moorshedabad, Jessore, Kishnaghur, and Midnapore. I am very far indeed from agreeing in all that these distinguished officers suggest: in fact it would be impossible to agree in all that they recommend, for they differ amongst themselves. But still I venture to think that these papers are well worthy of most attentive perusal. I will ask the Council for a few minutes to recollect what was the substance of these proposals which have been thus considered. The proposals may be thus summarised:—

1*st*.—That a Bill be introduced as supplementary to Act VIII (B.C.) of 1869, for the further laying down of principles whereby rents should be decided between the landlords and the occupancy ryots as defined by the Act.

2*nd*.—That this supplementary legislation be confined to occupancy ryots (who now form a large portion, perhaps the majority, of ryots), leaving non-occupancy ryots, or tenants-at-will, to the operation of the existing law.

3*rd*.—That in cases of dispute, the rent of the occupancy ryot should be fixed at rates less by at least 25 per cent. than the rates ordinarily paid by non-occupancy ryots in the neighbourhood or in the district.

4*th*.—That even more favourable rates should be allowed to old occupancy ryots, who had (either of themselves or by those from whom they inherited) held their lands thirty years and more.

5*th*.—That the ordinary rates payable by non-occupancy ryots should be ascertained by evidence in the usual way, but that if from any cause this ascertainment should be found impracticable, then the Collector should be directed to ascertain, or if he failed, then the rent of a non-occupancy ryot should be calculated at one-fifth (20 per cent.) of the value of the gross produce, as the basis for determining the rent of an occupancy ryot, the result of which would be that an occupancy ryot's rent, calculated on that basis, and being at least 25 per cent. less, would be 15 per cent. of the value of the gross produce.

The criticisms to which these proposals have been exposed lead me to think that they will have to be very much modified if we attempt to pass them into law. I think that the proposition to extend specially the favourable rates to old occupancy ryots, who have held their lands for thirty years or more, cannot be carried out under the circumstances of the country. I am advised by competent authority that these proposals have been highly approved by a large class of ryots and by gentlemen, both European and native, who interest themselves in the cause of the ryot, and I should be very glad if the carrying out of this proposal had been found to be practicable. But what with the difficulty of establishing these periods of occupancy, and what with the temptation that will be afforded to an undue degree of litigation, and what with the extreme difficulty there would evidently be of obtaining the consent, or anything like the consent, of the landlord class to any such conditions, I am afraid that they are, under the present circumstances of the country, impracticable. I say this with great regret, because, if carried out, they would have done a great deal to improve the status of the ryot without unduly detracting from the status of the zemindar. But

however good the measure may be, if found impracticable, there is not much more to be said.

Then great objections have been made to the determination of the rent of occupancy ryots by reference to the rates which are paid by non-occupancy ryots. It is commonly said that there is not any perceptible difference between the rates of occupancy and non-occupancy ryots. I confess I am not myself convinced, despite all other authority, upon that subject. We have at all events the authority of many well-informed persons, and of the large number of landlords who compose the British Indian Association, to the effect that there is a difference between the rates paid by occupancy ryots and non-occupancy ryots. I think it stands to reason that in many districts there must be some such difference. I feel sure that one of our hon'ble colleagues, Mr. Reynolds, who is one of the best living authorities on the affairs of Eastern Bengal, will tell us, despite what we have heard to the contrary, that there is such a difference in many districts; and in some parts indeed of all districts there must, I apprehend, be such difference. But at any rate there is this to be said, that the Collectors in some districts allege that the occupancy ryot is paying at the same rate as the non-occupancy ryot—at least as much. Well, if that is the case, this Bill would have been a very fortunate one for the occupancy ryot, for in that case his rent could not possibly have been enhanced with reference to the rate of the non-occupancy ryot. And there is this advantage in the proposal, that it is made on the authority of the great landed interest of the country. Then again, in some places the Collectors allege that the occupancy ryot is actually paying more than the non-occupancy ryot. In that case it is better still for the occupancy ryot, because there is no chance of his rent being enhanced. He may not be able to obtain an abatement of rent, because the Bill provides that there will be no abatement claimed under it; but there is no chance of his rent being enhanced. And this remarkable protection he would enjoy in virtue of a rule proposed by the largest society of landlords in the country. Thus this proposal, even in such extreme cases, will not be found so unworkable as some authorities seem to think.

Then we come to the proposal which amounts to this, that the landlord's share may be taken at 15 per cent. of the value of the gross produce. Now, the landed interest affirm that this is much too low. On the whole I believe that this would not be too low in some parts of the country. It would be too low, however, in other parts of the country, especially Western Bengal, perhaps also in Central Bengal, and we may be obliged to ask the legislature to allow some higher proportion to be taken. In reference to this it is proposed that the proportion shall range from 15 to 25 per cent. on the value of the gross produce.

Further in the course of inquiry we have found that some increased, some enlarged definition, will have to be made of the term "occupancy ryot;" for it is found that the term "occupancy ryot" has got to be applied in some parts of the country to a class of persons who may be described almost as tenure-holders—that is to say, there is a class of occupancy ryots who hold considerable tenures, which tenures they sublet to other ryots,

H. H. nor the President.

who hold from father to son, and who apparently may claim all the benefits of Act VIII of 1869—who are indeed in all respects virtually occupancy ryots. They really are middlemen or tenure-holders. Nevertheless these so-called middlemen are, by common acceptation of official terms, called occupancy ryots. That is the state of things which will require consideration at the hands of the legislature when we come to make the law precise. Inquiries that have been made have brought out into very strong relief the grievances which have been long known to exist regarding the realization of rent. The zemindars affirm now what they have always affirmed, but more than ever now, that if the law is to be amended, there should be some provision for the more speedy realization, not of disputed, but of undisputed rents. This matter has been carefully examined by our hon'ble colleague Mr. Bell, and I am sanguine that if a Bill is introduced into this Council he will be able to insert some sections which shall be satisfactory to the just expectations of landlords without being liable to any abuse as affecting the ryot.

Looking to all these various considerations, with which I am afraid I have troubled the Council at great length, I decided to make a revised proposition, and to endeavour to obtain the assent of the Secretary of State and the Government of India to introduce the measure during this present session. The Council are aware that by existing orders we must obtain the sanction of the Secretary of State before introducing any important measure; and this of course is a very important measure. The following is an abstract of what I propose:—

1*st.*—That in cases where an occupancy ryot is liable to enhancement of rent under section 18 of Act VIII (B.C.) of 1869, such enhancement is either to be regulated by the principle that his rent shall be less than the ordinary rent of a non-occupancy ryot by a certain percentage, from 20 to 25 per cent., or else is to be calculated on a certain proportion of the value of the gross produce, from 15 to 25 per cent.: provided always that no occupancy ryot shall be entitled to claim under the foregoing rule any abatement from the rent which he has heretofore paid.

2*nd.*—The definition of an occupancy ryot, as given in section 6 of Act VIII (B.C.) of 1869, to be somewhat extended, so as to include ryots cultivating under other ryots in certain classes of cases.

3*rd.*—The right and interest of an occupancy ryot to be rendered liable to sale for default in paying rent, and also transferable by private agreement.

4*th.*—The process for realizing arrears of rent in undisputed cases to be simplified by the court or other deciding authority being empowered, on application from the landlord, to issue a notice to the ryot requiring him either to pay or to appear and show cause to the contrary. In the event of the ryot neither paying nor appearing, the court to order attachment and sale of the defaulter's moveable property.

5*th.*—The rents payable by tenure-holders or others possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryot, when not fixed by special agreement or by the circumstances of the tenures, to be determined according to a standard similar to that of the occupancy ryots, but more favourable by 10 per cent.

To these propositions, and to the measures as thus embodied in this abstract, I have been so fortunate as to obtain the general assent of the Government of India. The reply of the Government of India has been printed, and I believe has been placed before every hon'ble member; and the Council, I think, will be glad to see that the Government of India have asked the Secretary of State to be so kind as to telegraph to us his sanction if it be that he has no objection to the measure, as I hope he will not have. I am sure it will be satisfactory to hon'ble members to observe that the Government of India declare that they concur with the Government of Bengal as to the necessity for laying down more definite rules than those at present existing in the lower provinces of Bengal for the guidance of the authorities in determining the rates of rent.

Now, the remarks I have already made may spare me the necessity of troubling the Council with a very detailed description of these several propositions. And as regards the first proposition, I need not repeat what I have just said regarding the rent of occupancy ryots being calculated at a rate of from 20 to 25 per cent. less than the rent of non-occupancy ryots.

But I have a few words to say regarding the proposal for fixing the landlord's share at a certain proportion of the value of the gross produce, namely, from 15 to 25 per cent. There is one particular objection which has been raised, and which will doubtless again be raised to this proposal, to which objection I would ask the attention of the Council for one moment, namely that no such rule can work, because in some parts of the country, as in Western Bengal, the landlords are already receiving much more than 25 per cent. of the value of the gross produce; and in other parts of the country, especially towards the more remote parts of Eastern and deltaic Bengal, the landlords are receiving much less. In Western Bengal they are said to be getting even as much as 50 per cent., and in some parts of Eastern Bengal only one-fortieth of the produce—or, in other words, almost nothing at all. Now, in consequence of this extreme disparity, it is contended that no such proposed rule can possibly work. But notwithstanding this difference, I maintain that it may possibly work. For instance, where the landlord is receiving more than 25 per cent, we simply leave him alone; we leave him and his tenantry absolutely untouched. There will be of course no immediate claim for enhancement allowed under the rule. The landlord will not be injured, nor will the tenant be benefited, because the Bill will contain a provision to the effect that there shall be no abatement in consequence of the provisions of the Bill. It may be that the Bill will give the landlord no assistance in making further enhancement—at least not for a considerable period; not until there shall be some very extensive improvement in the cultivation, or extension of new produce, or a very great rise in prices. But for the present no doubt the effect will be that landlords who are getting more than 25 per cent. will get no further increase; and I venture to think that they would not get it under the existing law, and could not get it for many years to come. I think I may appeal to some of our colleagues who are well versed on the question, and also to some hon'ble members whose attention is given to economic questions, as to whether the landlords ought to get more under such circumstances. If any landlord does get much more than 25 per cent. he is very lucky, because he

His Honor the President.

gets more than he ought to be receiving in the opinion of many authorities. But take the other case, in which the landlord is receiving much less than 15 per cent.; only one-fortieth, or two, or two-and-a-half, or say five per cent. Well, I can only say that in such cases the ryot must be paying a nominal or peppercorn rent for some reason or other, because the land has been recently reclaimed or thrown up by a river, or something of that sort. For some reason of that kind the ryot is paying a peppercorn rent. Possibly there may be some tacit agreement between him and his landlord: perhaps the payment of a large *salami*, or something of that kind, upon the understanding that full rent would not be demanded afterwards. Now, if there has been any tacit agreement, or anything like the payment of a *salami* in consideration of the rent being kept at a nominal rate, then that is an agreement. And the Bill will provide that nothing in the Act shall interfere with any existing agreement, whether direct or indirect, and so on. But if the ryot is really paying a nominal or peppercorn rent, then sooner or later he will have to pay a real rent; and if he has to pay any rent at all, then 15 per cent. is a very moderate proportion. It would be impossible to say that if a man has been so fortunate as not to pay any rent in the past, therefore for the future he should not have to pay. There might indeed be the question whether he had been paying the extremely low rent for 20 years and upwards. We must always remember the provision in the existing law, that if a man has been paying a certain rent for 20 years, it is a great presumption in his favour. But if he has paid only a nominal rent for some lesser period than 20 years without any particular agreement, then it is impossible to maintain him in the position of holding an almost rent-free tenure.

As to the second proposition, the extension of the definition of an occupancy ryot, I have already said all that need be said. As to the third proposition, regarding the right and interest of an occupancy ryot being rendered liable to sale for default in paying rent, and also transferable by private agreement, the Council will observe that it is objected to by the Government of India. Still I am not sure that this will be regarded as the final dictum of the Government of India. It is a matter on which it is possible they may be disposed to receive representations; and that may depend upon the advice I may receive from the most experienced gentlemen in Bengal, and also upon what I may find to be the opinions of the Council. It will depend upon that whether I shall make a further representation to the Government of India on the subject. I think, if the Council will refer to my minute and to the papers, they will find that there are a great many apparently strong reasons for putting forth this proposition. I believe it will certainly not injuriously affect the ryot, but quite the contrary; that while it conduces to the convenience of the zemindar, yet, on the other hand, it will give a greatly enhanced value to occupancy tenures throughout these provinces. However, unless we shall deem it necessary to try to persuade the Government of India to allow us to proceed with that particular section, we shall have to omit it. I will not trouble the Council now with any detailed remarks about the process for the realization of arrears of rent, as I am in hopes we shall receive many valuable observations and suggestions from the Hon'ble Mr. Bell.

The fifth proposition may perhaps not be thought to require detailed comment. The existence of these very important tenure-holders or middlemen is fully recognized. I did not say anything about them in my minute of April last, because I was advised on the best authority that nothing is necessary, that their position is either fixed by individual agreement or lease, or determined by law, and I still believe that this description is applicable to the great majority of these tenures; but many tenure-holders have individually represented to me that their cases are not recognized either by law or by any particular Bill, and therefore they would like to have something inserted in the law for their protection. So I venture to suggest that in such cases they may be placed in the same position as occupancy ryots with a beneficial percentage of, say, 10 per cent. That, however, is a matter of detail which can be considered when the Bill comes before the Council.

Perhaps, also, before I quite pass away from this measure, I ought to add that, in reference to the occupancy rent rate being fixed with reference to the non-occupancy rent rate, some people do consider that there should be a provision for reference being made to the Collector to decide what should be deemed the average rent rate of the district, or part of a district, for the purposes of this Act. Now, that is a matter which I may say must be partly dependent upon the pleasure of this Council, and partly also on the concurrence of the great landlord interest. If, of course, the landlords should agree, and this Council should agree to put in such a provision, then the Government could have no possible objection. My humble opinion is that the thing may be well managed; that the Collector could be called upon to inquire and to lay down an average ordinary rent rate for each district. Such proceedings might be taken under the supervision of the Commissioners and the Board of Revenue; and I believe that the rates thus ascertained would be tolerably satisfactory. There may be cases in which the parties could show the court that particular lands could not be assessed on the average rate. In that case there would have to be that sort of inquiry which does frequently have to be made locally by the courts of justice; otherwise, the average rate would be applicable. But then I must bear in mind that such proceedings rather impinge upon the much-vexed question of making settlements. I know that the term "settlements" has a somewhat strange sound to our ears in Bengal, and the measure will savour, so to speak, of extreme interference on the part of the executive. I mention the matter not because I have any serious hope that any such measure will be carried, unless public opinion should change from what I believe to be its tone at the present moment. But nevertheless the matter is worthy of consideration, and I can only add that if the Council could see their way into the matter, I shall be glad enough.

Another point which I have further to mention is that if you have the rule of proportion, there would arise a particular question, which is this. The proportion of the value of the gross produce will be taken upon the value of that produce of an ordinary kind. By an ordinary kind we mean rice and other cereals. These may be considered as the ordinary produce of the land of Bengal; and when I allude to the value of the gross produce, that is the produce

His Honor the President.

I have in my mind. Of course, I do not say that there are not other kinds of produce which are already increasing, and may increase more, particularly tobacco, mulberry, opium, indigo, jute, safflower, and others. But there is this to be considered, that the landlord's share, which is calculated on the proportion of the value of the produce which would be considered fair as regards common produce like rice, would be deemed to be too high as regards such higher kinds of staples, which are generally thought to require more skill, capital, and labour on the part of the ryot. I believe, even in the most favourable cases, the zemindar will admit that he cannot get so large a share of the gross produce from these superior crops as that from produce of the common kinds. That will involve the difficulty of having two sets of proportions—one for the common produce, another for the superior staples. That, I admit, is a real difficulty. But if it cannot be overcome in any other way, it must be overcome by fixing two proportions—one for common kinds of produce, and one for other crops. Either that, or another plan which may find favour with some members is this, that the proportion should be made up as an ordinary proportion for common crops, with a proviso that something should be added in the case of land being cultivated with certain superior crops, which would be specified in the Act.

Such, then, are the remarks I have to make on the original proposition and on the revised proposition. In conclusion, I would wish to urge upon the Council very earnestly the necessity for some legislation, for some rule being fixed, in reference to the determination of rents. There is an improvement at present in the relations between landlord and tenant, and we no longer hear of the agrarian disturbances of which we used to hear some two or three years ago. Although we have an Agrarian Disturbances' Bill, we have never yet had to enforce it, nor have there been any such violent disputes as to require the enforcement of the provisions of the Act. There has, as the Council are aware, been one very sad individual case occurring in the Furreedpore district (a landlord murdered, as it is feared, by ryots), regarding which severe inquiries will be made. But with the exception of that one unhappy sign, I do not perceive any indication of agrarian troubles arising anywhere. Nevertheless I will appeal to all concerned as to whether there is not still a very uneasy feeling lying deep in the hearts and minds both of landlords and tenants. There is a certain sort of underground agitation going on, and which goes on because we have not any proper means of stopping it. This agitation arises because neither party knows whether or not rents can be enhanced. Now, there are many persons who think that the best way is to leave things alone; to let landlords and tenants fight it out: and that the result probably would be that rents would remain absolutely unchanged. I must say definitely that I entirely dissent from that view. I believe it is impossible to prevent cases arising regarding enhancement of rent. That such enhancement of rents should be possible is distinctly contemplated by the existing law of Bengal, which lays down precise provisions with the view of what shall happen when such a thing takes place. Therefore it is too late to say that enhancement of rent should be out of the question. I yield to none

in the desire and the hope of seeing a contented and prosperous peasantry, the ryots having heritable tenures handed down from generation to generation with proper equitable rents which cannot be enhanced except by the decision of a court of justice, and with full security of enjoying the fruits of their labour and a full share of the general advantages which arise from a secure and settled Government. But, on the other hand, it never was contemplated that there should be no such thing as enhancement of rent. However much it may be stated in the permanent settlement that the rights of under-tenures should be protected, it never was asserted that there should be a special and perpetual sub-settlement with the ryots. Nor was it ever suggested that the old pergunnah rent rates, though taken as a guide, should not be open to alteration or to augmentation as time went on. What these pergunnah rates ought to be was never settled. If the intention was to make such a settlement, the Government of the time would have provided for it; and it could only have been done by a regular settlement of rents throughout the country. That has never been done, and I presume never will be undertaken. If the value of land is to increase with the rise of prices and the improvement of produce, it seems to follow that there must be a gradual, though moderate, augmentation of rent throughout the country from time to time—enough to satisfy the demands of the landlord, while leaving a clear and liberal margin of profit to the ryot. In short, if the material resources of the country are to go on growing; if the culture of new staples is to flourish—the jute of yesterday, as it were, the tobacco of to-day, the flax, as we hope, of to-morrow—if the use of machinery is to spread not only around the presidency towns, but also throughout the interior of the country; if all this is to continue happening, as we trust it will, then we must look forward to an augmentation of rent, equitable and moderate doubtless, allowing also for a stable and valuable occupancy status accruing to the ryot, but still augmentation. This is a necessary outcome of the improvement of the country. If we expect the country to advance, we must expect rents to rise concurrently; and having regard to this inevitable circumstance, we ought to prepare our legislation accordingly. We may be sure that the augmentation of rent will never be managed satisfactorily to the two parties concerned—will be nothing but a bone of contention between them, unless some legislation shall be effected by this Council whereby the courts and the parties can know how, and on what principle, the augmentation should be regulated. Moreover, without the principle of augmentation of rent is recognized, one hardly sees how the permanent settlement can work properly. Whether there ought to be a permanent settlement or not, is a question we are now called upon to discuss. The permanent settlement is a great fact, and it is the greatest of all facts in Bengal, and we must legislate on that basis. Therefore I will ask the Council to consider whether it is possible to go on postponing from one period to another the difficulties which exist of determining some rules whereby rents may be justly and reasonably assessed; and when I say reasonably and justly, I say so quite as much in the interests of the ryot as of the zemindar. By putting off legislation, we only defer the evil day until disputes begin and men's passions become excited and settlement becomes more and more difficult.

His Honor the President.

I would sum up the argument thus. If there is to be enhancement in any class of cases, it virtually cannot be without a decree of court, because although the rent of a tenant-at-will can be enhanced without such decree, some persons say that there is no such class existing any longer: they have all, or nearly all, become occupancy ryots. Those classes, such as korfa, oothundi, and the like, are said to be not tenants at all, and to be little more than farm-labourers, though this view of their status may be open to dispute. Probably, however, the great majority of ryots are in such a position that their rents cannot be enhanced without a decree of court. The existing law, no doubt, does lay down the circumstances under which there may be cases for enhancement, which, as is well known, are mentioned in section 18 of Act VIII of 1869. The Council will recollect that there are three circumstances under which cases arise for enhancement in the case of a ryot having a right of occupancy: (1) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description, and with similar advantages, in the places adjacent; (2) that the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot; (3) that the quantity of the land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

But this law only lays down the circumstances under which enhancement of rent may be possible. Granted that the ryot is paying less than others; granted that the value of the land has been increased by causes other than his own exertions: granted that he is holding more land than is set down to his name: these are the circumstances only which would justify some enhancement of rent. Still there is nothing in them whatever to show how the enhancement should be adjusted; there is nothing to show what are the data, what are the principles, upon which the court should proceed in its adjudication. How is enhancement to be settled? As to that there is positively nothing. Of course we have elaborated what is called the rule of proportion—that rule which, in default of anything better, the highest tribunal has tried to frame as the best rule which you could make under the unsatisfactory condition of the law. You know very well what the rule is, that the new rent should bear the same proportion to the present value of the produce as the old rent bore to the old value of the produce when the said rent was last fixed, or at some subsequent period which may be taken as a starting-point; or, in other words, the old rent should bear to the increased rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value. Now, without denying that this perhaps is as good a rule as the courts could arrive at in the indeterminate state of the law, their business being not to amend the law but to carry it out as far as possible, still I say that this rule amounts to no rule whatever, or is worse than nothing, because it positively bristles with difficulties from beginning to end. In the first place, it is only in the event of there having been at some previous period some definite dispute that you have some starting point; but notoriously it is

not the case that there has been in all cases a definite dispute which has been determined: usually there is nothing of the kind. The rent has gone on for a lengthened period; we have no village records which are filed in any public office. The zemindar is the only person who has a record, and that cannot be appealed to as an authoritative document, especially as the ryot will refuse to acknowledge it. So that there is no fixed starting point. If, therefore, a point is attempted to be fixed, then immediately the whole arena of dispute is opened. But supposing a starting point is fixed, and that there was some particular rent fixed at some previous period, even in that case the whole question is absolutely begged, because the question is whether that particular rent was a right one or not. It is utterly unscientific to say that because the rent was fixed a few years ago it was an absolutely right one. The parties will allege that this is a wrong rent, that it ought to be decided according to proper principles of reason and justice, and that the old rent is faulty. The present existence of a dispute virtually alleges that there is a fault in the existing rent and in the old rate; so that whatever faults there may be in the old rent are to be stereotyped and perpetuated by this rule of proportion, a rule which does not even profess to be guided by any principle, but merely takes what was, or is, as a foundation for what ought to be in future. Then of course there is extreme difficulty in finding out what was the produce and what was the rent at some anterior period. We know it is not always easy to find these things out at the present day; but how infinitely more difficult will it be to ascertain what these lands produced, and what was the rent so many years ago, particularly, too, when the character of the cultivation of the land has changed. And it is this change of culture that so often causes disputes about rent: it is perhaps the commonest ground for such disputes. Whereas the land grew common crops once, it bears superior staples now; but when and how the change began—whether it began since the time selected as a starting point—can hardly be ascertained in the absence of any records filed in the Collector's cutcherry. It is very well to take into consideration the produce of certain fields as they are now; but to ascertain whether each field grew this or some other crop so many years ago, is an unsatisfactory undertaking in the face of conflicting statements. I say, with the greatest respect to all the eminent authorities who tried to frame this rule, that it is unworkable, and is apt to become a trap for unwary litigants. If, then, this rule cannot work, what is to happen? At present we all know what happens: that no decisions are given, that the subordinate courts are perfectly puzzled, and when in doubt what to do, they decide to do nothing, and the disputes remain. The inevitable consequence of economic changes causes disputes to arise, and they are left unsettled to the great detriment of landlords and tenants.

Then I say that there ought to be some modes of arriving at a decision. If there are to be, then how are they to be arrived at? Some say, let them be arrived at by the individual judgment of the courts who might try the cases; some say, let them be decided by juries. Such proposals can, however, hardly be satisfactory to the great landlord interest, because it is obvious that in the absence of any

His Honor the President.

rule there would be the very widest divergences of opinion: in some districts there would be one thing, in some another, and in no two courts would there be uniformity of decision. In matters in which there is the greatest room for differences of opinion, there will be as many opinions as there are courts; and if the decision were left to juries, the result would be still more unsatisfactory. But if you do not leave it to individual courts and juries, then I want to know what rule and what principle you will follow? We say on behalf of the Government of Bengal that there are two courses open—either take the rent of the non-occupancy ryot, if you can ascertain it; or if not, then take a proportion of the produce. These are the two proposals which we offer. If this Council generally, or any hon'ble member of it, or any one outside, or the great landed interest, can propose to us any better rule, we shall most gladly consider that proposal. But in the meantime these are the two proposals which have been submitted for your consideration. I earnestly hope we shall be able to arrive at something like a satisfactory solution of the difficulty. We shall be most willing to defer to any opinions we may receive. But I can only say that if the difficulty shall be solved, as I hope it will, that can only be by the co-operation of the great interests concerned, landlords and tenants, and the wise thoughtfulness of this Council.

GHATWALI TENURES.

The HON'BLE MR. BELL moved for leave to introduce a Bill to define the rights and duties of ghatwals in the district of Bankoora. He said hon'ble members were doubtless aware that in the western districts of Bengal there existed a class of police-officers who derived their name from the ghats or passes which their forefathers had been originally appointed to guard. The precise date, or the precise circumstances under which these ghatwals were called into existence, it was at the present time impossible to determine. He believed there could be no doubt that they owed their origin to those troubled times of anarchy and disorder which preceded the advent of British rule. The majority of the ghatwals who would be affected by the legislation which he asked leave to introduce were located in the pergunnah of Bissenpore, a pergunnah which was formerly ruled by a long line of chieftains who took their title from the name of the pergunnah. The pergunnah itself was of wide extent, with a fertile soil and an industrious and quiet people. But during the time which preceded the dissolution of the Mogul empire, these quiet and industrious people were exposed to the ravages of marauding tribes, who robbed them of the fruit of their labours and too often of their lives; and it was to protect the people against the incursions of these lawless marauders, who appeared to have been, though on a more exaggerated scale, the forefathers of the thugs and dacoits of our day, that the ghatwals were originally called into existence. Certain spots were selected along the main lines of communication, and near these spots a colony of ghatwals was located under their own sirdars or chiefs, with tracts of land assigned for their support. For these tracts of land they paid a quit-rent to the Rajah, and they were also expected to perform certain services for the State; to guard the district from the incursions of these marauding tribes, to

secure the inhabitants of the villages from robbers, and to protect the persons and property of travellers and merchants who journeyed through the district.

And now he would ask the Council for one moment to consider the position of ghatwals with reference to the Rajahs themselves. They all knew that in Hindoo society there was a great tendency for offices to become hereditary. The priest who ministered at the family altar was succeeded in his ministrations by his son, and the more humble barber handed down his razor to his children, who continued to perform the same service that their father had performed before them. This, too, seemed to have been the case with the ghatwals. After the death of the original ghatwals, their sons and descendants succeeded to the office and the lands which their fathers had held, and thus the office of ghatwal and the land attached to the office became as it were hereditary. But there could be no conceivable doubt that the Rajah always kept in his own hands the power of dismissing the ghatwals. In those days there were no civil courts to act as a check on the executive. The whole functions of the Government were in the hands of the Rajah, who was left undisturbed in his pergunnah, provided he did not fail to contribute the stipulated tribute to the Delhi Government.

MR. BELL mentioned these circumstances because at the present time a claim had been set up by the ghatwals to an absolute indefeasible right to the offices and the lands held by them. What he conceived was the position of affairs under the Rajahs was this :—No ghatwal was interfered with so long as he performed his duty to the satisfaction of the Rajah; but if he failed in his duty, it was fully in the power of the Rajah to dismiss him and resume his land. And MR. BELL was fully supported in that view of the case from what was known to be the situation of the ghatwals when the government of the country passed into the hands of the British Government. The first mention he had been able to find of the ghatwals of Bissenpore was contained in a report of Mr. Grant, written in 1787, and printed by order of the House of Commons as an appendix to the Fifth Report.

Mr. Grant there mentions that pergunnah Bissenpore contained 1,30,000 beeghas of chakran land, the occupiers of which composed a provincial militia at the disposal of the Government. The next record MR. BELL had been able to find, which spoke of these ghatwals, was a report of the Collector of the Jungle Mehals (originally Bissenpore was a part of the Jungle Mehals), in which he stated that he had dismissed 39 ghatwals whose services were no longer required, and had brought their lands to what he called the "revenue account." In other words, he dispensed with the services of 39 ghatwals and imposed a suitable assessment upon the land. This was in the year 1798. The next mention of the Bissenpore ghatwals occurred in 1802, and the document he referred to was a very important one. The ghatwals, as MR. BELL had before stated, were bound, in addition to the services they had to render, to pay to the Rajah a quit-rent for their land. The Rajah complained that the ghatwals were in arrear in their payments, and that while he was expected to pay his revenue to Government with unfailing punctuality, he could not enforce the same punctuality from the ghatwals. On this an agreement was entered into by which the Collector undertook to collect the quit-rent from the ghatwals

The Hon'ble Mr. Bell.

and to credit the Rajah with the amount of quit-rent in his revenue account. But the Rajah made this stipulation, that if ever the services of the ghatwals were dispensed with, or if on any occasion or for any reason the lands of the ghatwals were resumed, he claimed the right to have the ghatwali lands re-annexed to his zemindary. MR. BELL mentioned this circumstance to show that at the beginning of this century the view taken by the Indian Government of that day, and also by the Rajah of that time, was utterly opposed to the ghatwals having any absolute or indefeasible right in the lands assigned for their support. Both the Government and the Rajah clearly considered that the services of the ghatwals could be dispensed with at pleasure, and that if their services were dispensed with, the land would be assessable with rent. From that time to the present the appointment and dismissal of ghatwals in the Bankoora district had remained entirely in the hands of the Magistrate. And it was a very singular circumstance, that although a great many ghatwals had been dismissed from that time to this, there had never been a single suit instituted to contest the award of the Magistrate until within the last two years.

With regard to the appointment of ghatwals, the principle upon which the Magistrate had acted was this, that where a ghatwal had died or had relinquished his office from age or other infirmity, the Magistrate invariably appointed to the office the son or some other member of the family in his place. To this extent the Magistrate had recognized the quasi-hereditary character of the holding; but in other cases, where a ghatwal was dismissed for some gross act of misconduct, it had been usual for the Magistrate to make a more severe example than would result from mere dismissal; and in these aggravated cases it had been generally the custom for the Magistrate to transfer the tenure to some outsider. And, as MR. BELL said before, although there had been numerous instances in which the Magistrate had dismissed the ghatwal and appointed an outsider to the office and the land, there had never, until two years ago, been a single instance in which the authority of the Magistrate thus to deal with the ghatwals was contested or disputed. The present difficulty arose in this way. In 1872 there was a great increase of crime, particularly of dacoities, in Bankoora, and the District Superintendent of Police, acting under the orders of the Magistrate, thought he might very well utilize the services of the ghatwals by calling upon them to patrol the roads. The ghatwals considered that it was no part of their duty to do so, and they resisted the orders of the Magistrate. Certain suits had been filed, and the result had been that the ghatwals, as he understood, had now struck work altogether, and claimed exemption from the performance of any duty whatever. Up to 1872 they performed whatever duties were required of them, but now, as they insisted upon their legal rights, it was necessary to determine exactly what their precise duties, rights, and privileges, were. MR. BELL had already mentioned to the Council that the ghatwals were spoken of by Mr. Grant in 1787 as a kind of provincial militia, always ready to act under the orders of the Magistrate; and in a letter of the 6th April 1810 the Collector of the Jungle Mehals gives a more detailed account of the

duties which they then performed. This document was a very important one, and he would read to the Council a very short extract from it:—

"This part of the road, I am of opinion, is already well protected by two police thanas and a guard of burkundazes which are situated upon the road at equal distances of ten miles from each other, but more specially by an ample establishment of the ghatwals of Bissenpore, who are the immediate servants of the Government, and whose duty it is to escort travellers in safety to the limits of their respective ghats, which are accurately defined, and to watch over and guard the property of merchants and strangers, for the safety of which within their several limits they are held accountable; and in order that they may be ever ready to render protection to travellers or aid in the apprehension of robbers, small sheds are erected at distances of one or two miles on the roadside, where three or four armed ghatwals are stationed by the sirdars of the ghat, whose names are registered at the thana, and who are only removeable from their situations on proof of misconduct to the satisfaction of the Magistrate."

The only other extract with which he would trouble the Council was from a letter of the Magistrate of the Jungle Mehals dated 20th September 1816, which was as follows:—

"The duties performed by the ghatwals are those of dependent police-officers. While the sirdar ghatwal in some places has a superintendence and control over all the ghatwals of the pergunnah, others have a more limited charge of some specific ghat, or of a particular number of villages. The dependent ghatwals are employed in the protection and escort of travellers from one village to another, in guarding different passes through the jungles, and in performing the usual duties of village watchmen."

Such was the account given of the ghatwals in the early part of the century, and the uncontested usage of the district from that day to this bore out the accuracy of the description. The Council would now have to decide what duties in future the ghatwals should be called upon to perform. In the course of the last autumn His Honor the Lieutenant-Governor visited Bankoora, and amongst the papers which would be laid before the Select Committee to whom the Bill would be referred was a Minute of the Lieutenant-Governor with regard to this question. His Honor proposed that the duties to be exacted from the ghatwal should correspond with those which were to be found in the Bengal Chowkidaree Act and the General Police Act.

With regard to the hereditary pretensions which were set up by the ghatwals, it was proposed by His Honor that we should take our stand pretty much upon a decision passed by the Nizamut Adawlut in 1816. That decision was alluded to in the 3rd volume of Harington's Analysis, page 510. It was there laid down that when a ghatwal died his son should succeed him; but when he was dismissed for misconduct, it was discretionary with the Magistrate to appoint an outsider in his place. That seemed to MR. BELL to be consistent with fairness and equity to the ghatwals, and it was proposed to take our stand upon that decision, and to provide that in ordinary cases the son should succeed the father; but that in case of dismissal for misconduct, the Magistrate might appoint to the office and the lands any one he thought fit. To give due security to the ghatwals, it would be provided that any ghatwal who was deprived of his land by the Magistrate should have an

appeal against the Magistrate's decision; but when once that question was decided, it would not be again re-opened in the civil court.

These were the main features of the Bill which it was proposed to introduce. He might also mention that he had received from Messrs. Gisborne & Co. and Messrs. Erskine & Co., who were zemindars or putnidars in part of Bissenpore, a memorial asking that some provision should be made for giving facilities for realizing the rent of ghatwali tenures. As the ghatwal had merely a temporary interest in the land, the zemindar could not sell the land: he could only attach the moveable property of the ghatwal, which it was very often somewhat difficult to find. Messrs. Erskine & Co. therefore asked the Council to bear their memorial in mind if any legislation took place on the subject.

Such were the chief features of the Bill. He had before him a very valuable collection of papers on the subject, for which the Council were indebted to Mr. Macaulay, and which would be laid before the Select Committee; and he had also a very valuable report by Mr. Larminie, the Magistrate of Bankoora, who had submitted some very valuable suggestions, upon the basis of which he had no doubt the Council would be able to frame a measure which, while securing the rights and privileges of the ghatwals, would at the same time insist upon the performance of those services which law and usage required of them.

With these remarks he begged to ask leave to bring in a Bill.

The motion was agreed to.

COURT OF WARDS.

The HON'BLE MR. SCHALCH moved for leave to introduce a Bill to amend Act IV (B.C.) of 1870. That Act was entitled an Act to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal. It was now indeed something over six years since that Act was passed, and it had been found to work well. However, there had been some defects brought before the Board of Revenue, who had represented the matter to the Government, and the Government had now determined to bring in a Bill to amend those defects. The Bill had not yet been prepared, but he would mention the principal amendments which would be made by the Bill.

Section 50 of the Act restricted the investment of surplus profits to "the purchase of other landed property (loans) at interest upon Government security, the purchase of Government paper securities, or such other securities, stocks, or shares, guaranteed by the Government of India and approved of by the Board of Revenue, as to the Court (of Wards) shall seem fit."

In the Board's letter No. 309A, dated 13th August 1872, the Member in charge suggested to Government that it would be well also to permit the investment of the surplus income of one ward's estate in a loan to another ward's estate under the sanction of the Board. MR. SCHALCH thought section 50 should be amended so as to give the Court of Wards a general power to grant or make loans on mortgage, whether such loans were for the benefit of an estate under the Court of Wards or otherwise. It would often be a very advantageous

investment for the lending estate; and so long as a fair rate of interest was secured, there could be no objection to it on the ground that the money of one ward was being appropriated to lessen the burdens of another.

Section 75 of Act IV of 1870, and Act I (B.C.) of 1875, enabled the Collector to apply the certificate procedure of Act VII (B.C.) of 1868 to the recovery of arrears of rent from farmers, tenure-holders, and ryots in wards estates where such persons held *direct from the Collector.* The Board brought to the notice of Government the difficulties arising from a recent ruling of the High Court limiting the application of the certificate procedure to cases where the Collector himself had actually created the tenure or settled the ryot. MR. SCHALCH would very strongly urge that the Collector ought to be able to employ the summary procedure in all cases where he managed the estate direct, *i.e.* without the intervention of a manager, and to all classes of tenants on the estate.

These were the points which seemed most to press for notice, but the opportunity would be taken to make also the following amendments.

The definition of "minor" in section 1 would be altered with reference to section 3, Act IX of 1875 (the Indian Majority Act).

A doubt had been expressed as to whether, under section 2, the words "all proprietors of entire estates," &c., were sufficiently clear, so as to cover the case of several minor proprietors holding one entire estate in joint tenancy, *i.e.* whether the section might not be construed to mean that *each* disqualified proprietor must be the proprietor of an entire estate. It would obviate such doubt if the latter part of section 2, Regulation X of 1793, were re-enacted, which ran—"To prevent misconstruction, it is declared that by the terms 'all proprietors of entire estates paying revenue immediately to Government' are meant every such disqualified person who may be the sole proprietor of an estate, and any two or more persons, being proprietors of the whole of an estate, both or all of whom may be so disqualified."

It was not clear whether the appointment of a *guardian* was compulsory or optional in cases other than those referred to in section 57 of Act IV of 1870. MR. SCHALCH thought it should be made clearly optional.

By section 72 no suit could be brought on behalf of a ward without the previous sanction of the Court of Wards. The inconvenience of this was pointed out in the Legal Remembrancer's report for 1873-74, and had come to notice in many quarters since. MR. SCHALCH thought that the *Collector* might be empowered by the Court to represent it in respect of giving sanction to certain classes of suits, like ordinary rent suits. Paragraph 148 of the Legal Remembrancer's report, above referred to, drew attention to another anomaly under this section, as read in connection with the Limitation Act (IX, 1871, section 7), whereby an incompetent female proprietor failed to get the benefit of the stoppage of limitation during disqualification.

Referring to the same report, MR. SCHALCH thought it very desirable to provide specifically for levying from all wards' and 'other estates, the property of individuals under charge of the revenue authorities, such a general rate of contribution to defray the cost of superintendence as might be found necessary.

The Hon'ble Mr. Schalch.

This was done at present, but it would seem that a direct provision of law was required to obviate possible difficulty.

Lastly, section 74 should be amended so as to make it clear that the Lieutenant-Governor's consent to an adoption might be given either in anticipation or in subsequent confirmation of the act of adoption.

These were the general principles upon which it was proposed to draft the amendments; and he thought that if permission were given to him to introduce the Bill, he would be able to place it before them at the next meeting of the Council, and he would then take the opportunity of explaining the further details of the measure.

The motion was agreed to.

DETERMINATION OF THE RATE OF RENT.

The HON'BLE MR. REYNOLDS moved for leave to bring in a Bill to amend the law relating to rent. He said, the discussions which took place in this Council Chamber when the Act for the prevention of agrarian disturbances was under consideration would have prepared the Council for the introduction of a general measure for dealing with the question of rent. The remarks made by His Honor in his opening statement, and perhaps the selection of papers which had been circulated to the hon'ble members of Council, would show the outlines and the shape of the measure which the Government thought it desirable to bring forward. He said the outlines and the shape of the measure, because at this stage he wished to be careful in using very general and guarded expressions. He wished to be careful that no one, in consenting to the introduction of the Bill, would go further than recognizing the general principle that it was desirable that some attempt should be made to legislate on the subject. Further he did not mean at present to go, except to remark that the outline of the measure, as given in the papers before the Council, had not been sketched without very full consideration and very careful consultation with those whose opinions were likely to be of value. If there was at any time any truth in the saying that in the multitude of counsellors there was safety, he thought the course taken by the Government in connection with this measure was sufficient to secure that safety. They had received something like a hundred and fifty different expressions of opinion regarding the form the Bill should take. He did not at present ask the Council to follow him in detail. The Bill was still in the hands of the drafter, and when ready, which MR. REYNOLDS hoped would be at the next meeting of the Council, it would be circulated with a selection of the papers to the members, and then full discussion would take place. With these remarks he begged to move for leave to introduce the Bill.

The motion was agreed to.

ABKAREE REVENUE.

The HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to consolidate the laws relating to the Abkaree revenue in Bengal. He said, it would be in the recollection of the Council that the amendment of the Abkaree law was before them during the last session, and the Bill was then passed

and had become law as Act II of 1876. That Act certainly introduced some improvements in the Abkaree law. It was not proposed now to make any further alteration in the law. Indeed he was not aware that any further alteration was required; but if there were any alterations introduced, they would be of the very simplest and ordinary character. At present the law relating to the excise revenue was scattered over five or six enactments, and it was intended to consolidate them into one measure. The Bill had been drafted and was ready to be circulated amongst hon'ble members; but it had not yet been circulated because at present he did not propose to introduce the Bill, but only to ask leave to introduce it.

The motion was agreed to.

CONSOLIDATION OF THE REVENUE LAWS.

The HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to consolidate the laws relating to the land revenue. He was sure hon'ble members would recognize at once the importance and also the difficulty of the subject now under consideration. The Hon'ble Mr. Cockerell, who had perhaps as complete a knowledge of the question as any other person who could be named, had drawn up a memorandum in which he showed that the revenue law was scattered over 65 or 66 enactments, and he had prepared a scheme by which all these laws could be consolidated into one single enactment. If this measure could be accomplished, MR. REYNOLDS need hardly say how great a boon it would be to those who had to administer the law, and also to the very large portion of the population whose interests were affected by that law. This measure, like that relating to the Abkaree law, was intended to be nothing more than a consolidation of the law which was now scattered over the Statute Book, but it might perhaps embody certain rules of practice which in the course of time had acquired the force of law. There was an important distinction at the same time between this Consolidation Bill and the consolidation of the Abkaree law. The amendment of the Abkaree law was a matter which was recently under consideration, and he was not aware that there was any note of fresh alterations for the improvement of that law. But that could not be said to be entirely the position of the revenue law, and therefore it had been determined not to introduce any material alteration of the law in this Bill. It would be necessary, if such alterations were made, that a separate Bill should be introduced, the results of which would afterwards be incorporated into the code.

That was one element of difficulty in our purpose to consolidate a law the substantive provisions of which were not all finally settled. There was one other difficulty which he might mention, and which we might attempt to settle, but which he was afraid the Council would find to be a rather troublesome matter. No one at all familiar with our legal literature could fail to have been struck with the very great difference in style between the old and the new Acts. He did not wish to offer any opinion whether the old or the new style was clearer and more precise; but the difference of style was very marked indeed, and that made it a somewhat difficult matter to combine into one homogeneous law a variety of laws which had come down to us from 1793

to the present day. The Bill was still in the hands of the drafter, and at present he was unable to say when it might be ready to be laid before the Council. He should therefore leave any further remarks he might have to make to a future day.

The motion was agreed to.

AMENDMENT OF THE RENT LAW (CHOTA NAGPORE.)

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend the law relating to rent in the province of Chota Nagpore. It was, he said, hardly necessary to remind hon'ble members that the land tenures of Chota Nagpore were of a special and difficult character. There was an Act of this Council, II of 1869, known as the Chota Nagpore Tenures' Act, which was entirely devoted to dealing with one class of such tenures. The rent law of Chota Nagpore was Act X of 1859; but that law was found not to be in all respects suited to all the requirements and exigencies of that province, and the consequence was that practically it was in force with certain modifications. Of these modifications, one was that sales of real property in execution of decrees, unless the sanction of the Commissioner had been given to such sales, were not permitted. There were also restrictions on the right of distraint and ejectment. These modifications of the law were salutary, and, under the circumstances, indeed necessary. But their strict legality was perhaps open to some question, and at any rate it was desirable that the law should not be open to doubt, but have some fixed basis.

The draft of the Bill had been prepared, but it was merely a first draft, and some further details would have to be settled in communication with the Commissioner of the Division. To-day he merely asked leave to introduce the Bill.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

Saturday, the 18th November 1876.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, c.s.i.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Ramshunker Sen, Rai Bahadoor,
The Hon'ble Baboo Issur Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Keistodas Pal,
The Hon'ble Nawab Syed Ashghar Ali Diler Jung, c.s.i.,
and
The Hon'ble Moulvi Meer Mahomed Ali.

PUBLIC FERRIES.

The Hon'ble Mr. Bell moved for leave to introduce a Bill to amend the law relating to public ferries. There were, as hon'ble members were aware, two classes of ferries in Bengal—public ferries and private ferries. Public ferries were by Regulation VI of 1819 placed under the exclusive control and management of the Magistrate of the district, while private ferries were owned and managed by the zemindars within whose estates the ferries were situated. With regard to the latter class of ferries, the Bill would in no way interfere: the Bill merely related to public ferries. Now public ferries might be divided into two classes—first, those which intersected the public roads, which were made and repaired from public funds; and there was a second class of public ferries which, though they did not intersect any public road, had nevertheless been declared public, because they were situated in the vicinity of large towns, and it had therefore been thought advisable to place them under the control of the Magistrate for the general convenience of the public. With regard to ferries which intersected public roads, there were three classes. First, ferries on imperial roads. By imperial Mr. Bell meant roads maintained not from local, but from imperial funds. With roads of that description the local funds were in no way concerned; they were in no way mantained by local contributions and were not under the management of the Local Fund Committees, and it was not proposed to disturb the management of the Magistrate with regard to ferries which were situated on these roads. Another class of public ferries were those which were situated within the limits of municipalities, and this class of ferries had already been dealt with by the Council in the Mofussil Municipal Act which was passed during the last session. This description, therefore, of ferries would not be touched by the Bill which he now asked leave to introduce. The Bill would apply to public ferries of the third class, namely, ferries upon district roads which were constructed and maintained by contributions from local cess funds. Hon'ble members would recollect that in 1871 the District Road Cess Act was passed by this Council, and in February 1872 the then

Lieutenant-Governor of Bengal, Sir George Campbell, issued a resolution by which he assigned to local Committees the whole surplus collection from ferries which were situated on the roads maintained from local funds. But though the surplus income of such ferries was transferred to local Committees, the management of the ferries remained in the hands of the Magistrate, where it had been fixed by the Regulation of 1819. The object of the present Bill was not only to give the Local Fund Committees the surplus proceeds of these ferries, but the whole management and control of the ferries as well. In making over the ferries to these Committees, it would be necessary to provide that they should not unduly raise the rates of toll, and he should therefore propose to put a proviso in the Bill to the effect that the Local Fund Committees should not increase the rate of toll charged at any ferry without the previous sanction of the Local Government. He thought it was absolutely necessary that some provision of this sort should be inserted in the Bill, because the object of these ferries was not to raise a large revenue. That was not the primary object of ferry tolls. The primary object of establishing public ferries was to promote the convenience of the public; and therefore he thought it would be necessary to provide in the Bill that the Local Fund Committees should not be allowed to increase the rate of toll on any ferry without the previous sanction of the Local Government.

Another question which had to be dealt with was this: In case the farmer of a ferry was in arrears, some provision must be made for enabling the Local Fund Committee to realize the arrears. At present, by the Regulation of 1819, the Magistrate was permitted to realize such arrears, under an old Regulation of 1817, in the same way as arrears were realized from persons who had embezzled Government money. It would perhaps be thought sufficient by the Select Committee to whom the Bill would be referred if it was provided that any arrears due from the farmers of any of these public ferries might be realized by the Collector on the requisition of the Local Fund Committee in the same way as public dues were at present realized under the Act of 1868.

The main objects therefore of the Bill were these—first, to allow the Government, wherever it thought proper, to make over these ferries to the management and control of the Local Fund Committees; secondly, to provide that the Committees should not unduly raise the rates of toll; and thirdly, to provide a procedure to enable the Committees to realize with promptness arrears from the lessees of the tolls. These were the main features of the Bill which he now asked the permission of the Council to introduce.

The motion was agreed to.

COURT OF WARDS.

THE HON'BLE MR. SCHALCH moved that the Bill to amend the Court of Wards' Act, 1870, be read in Council. He said that when he obtained leave to introduce this Bill, he stated briefly the detailed provisions which were proposed to be inserted in it. These were more fully explained in the statement of objects

and reasons, and he thought he need not detain the Council further with any remarks upon them.

At present, when an estate was first taken charge of by the Court of Wards, it was generally found in a state of considerable embarrassment, and one of the first measures to be adopted to secure its solvency was to borrow money, which would be afterwards repaid from the effects of good management. It was therefore thought probable, if power was given under the Act to the Court of Wards to lend money upon the security of mortgages to wards' estates from other estates where there was a considerable surplus, that it would benefit both the estate to which the money was lent and the estate which advanced it. He would therefore propose that the Select Committee, which he hoped would be appointed to consider the Bill, should be directed to consider that provision, which he had not at once inserted into the Act. He would now move that the Bill be read in Council.

The HON'BLE BABOO KRISTODAS PAL said, while assenting to the principle of the Bill which the hon'ble member had introduced, he thought it right to mention that he wished that the scope of the amendments had gone farther than was aimed at in the Bill. The first point which struck him was a provision in section 2, which related to the disqualification of female proprietors. That was of course not a new provision; it was contained in Regulation X of 1793, the first regulation on the subject of the management of wards' estates. That regulation made a distinction between male and female proprietors of revenue-paying estates, and that law had come down to them from generation to generation. But he thought that, when the Government considered it desirable to amend some of the provisions of the existing law, the present opportunity might fitly be taken to revise that portion of the law which referred to the disqualification of female proprietors of estates, who were absolutely declared not competent for the management of their estates. There were good reasons for the provision in the Regulation of 1793, for it was then necessary to exercise a vigilant eye on the management of estates by female proprietors for the protection of the revenue. But the changes which had taken place within the last eighty years were such as no longer to cause anxiety to the Government for the security of the revenue, and it was therefore well worthy of consideration whether the time had not arrived for doing away with the invidious distinction made between male and female proprietors in the management of estates. The Hindu law made no distinction of sex in the management of estates; and as the Wards' Act declared only those male proprietors disqualified who might be minors, or who might be of unsound mind or otherwise incapable of managing their affairs, owing to any natural or acquired defects, he thought the same law ought to apply to female proprietors. If inquiries were made, it would be found that in many cases male proprietors were as incompetent to manage estates as female proprietors without the assistance of competent managers. But the Legislature had not thought fit to interfere with the exercise of the proprietary right on the part of male proprietors otherwise considered capable of managing their affairs. It was true that the Court of Wards did not always exercise the power with which the law

had invested it in the case of female proprietors; but cases had come to his knowledge in which even a will had been set aside because the widow of the testator was considered by the Court of Wards not competent to manage the estate. Suppose that rule were generally applied, what would be the result? Take the case of that enlightened and noble lady, Maharanee Surnomoye, whose beneficence fell in fertilizing showers upon the land. He would appeal to the Council to say whether that virtuous and philanthropic lady would have been able to manage her vast estates without the assistance of her able, skilful, and enlightened manager Baboo Rajiblochun Rai, Rai Bahadoor. Similar cases might be mentioned of female proprietors of estates who were respected by their tenantry for their goodness, liberality, and charity, but the successful management of whose estates was chiefly due to their managers. Now, if a proper person was selected for the management of an estate, it did not matter whether the proprietor was a male or a female, for the estate was generally well managed. And we had seen in many cases that female proprietors did exercise their discretion properly in the selection of managers, and the result in such cases had been generally successful and satisfactory. That being the case, he would invite the Council to consider whether the old provision disqualifying female proprietors without any valid reasons was a sound one.

The next point which he wished to notice was the clause about adoption. Now, to his mind that clause ran counter to a substantive law of the Supreme Legislature—he meant the Indian Majority Act. The provision in this Bill declared that no adoption by a ward should be valid without the consent of the Lieutenant-Governor. Now, the Majority Act IX of 1875 provided—

"Nothing herein contained shall affect the capacity of any person to act in the following matters, namely, marriage, dower, divorce, and adoption."

So that the Hindu law, as regards adoption, was left intact by that Act of the Supreme Legislature. The hon'ble member in charge of the Bill had thought fit to change the period of majority under the Court of Wards' Act in accordance with the provisions of the Majority Act, and BABOO KRISTODAS PAL thought it would be right also to adapt the adoption clause to the substantive provisions of the Majority Act. He had gone over the prior regulations relating to the Court of Wards, and he did not see any section which required that adoption by a ward should not be considered valid without the consent of the Government. [THE ADVOCATE-GENERAL.—The old regulations required that the adoption should have the confirmation of the Board of Revenue.] But even if they did, it was inconsistent with the Hindu law; and as the Majority Act declared the right of the Hindu to adopt without the interference of any executive authority, he left it to the Council to consider whether the section should be retained as it stood. [THE ADVOCATE-GENERAL.—It had been held, both here and in England, that even an infant could adopt: the question of adoption was wholly independent of the question of majority.] He was fully alive to that, but the Hindu law did not require that an adoption to be valid should have the consent of any executive authority. It was for the civil court to decide in case of dispute whether an adoption was valid or not.

Then he came to section 3 as amended in the Bill. It provided that "the Lieutenant-Governor might at any time declare any manager to be no longer subordinate to the Collector, and might order him to be directly subordinate to the Court or to the Board of Revenue." The hon'ble member in charge of the Bill was in the best position to say whether a manager should be independent of the Collector; but BABOO KRISTODAS PAL submitted that no one was better qualified to exercise due control over the manager than the Collector, and he therefore doubted whether it would be a move in the right direction to remove the manager from the control of the Collector even in exceptional cases.

He next came to section 6, which sought to legalize the practice already in vogue, he believed, of the payment of the cost of the superintendence of wards' estates under the charge of the Court of Wards. He fully subscribed to the principle contained in this provision, but he could not understand why the salary of the Deputy Commissioner of Wards' Estates in Behar was included in the list of charges. The Collector, the Commissioner, and the Board, each in their own spheres, exercised control over the affairs of wards' estates, and it was not proposed that they should be paid out of the funds of those estates. The Deputy Commissioner of Wards' Estates in Behar, BABOO KRISTODAS PAL believed, occupied the same position as the Collector. It might be that he devoted his whole time to the affairs of wards' estates, but surely some arrangement might be made to relieve him, and the District Collectors in Behar might be required to exercise the same functions in regard to wards' estates in that province which the Collectors in the districts of Bengal performed without detriment to their other duties. One thing should be borne in mind, that the Local Government had lately divided the large district of Tirhoot into two districts, which greatly facilitated work. There were now two Collectors available for work which used to be done before by one. Then again the Durbhunga estate, as the largest wards' estate, was managed by a highly paid establishment, and the work of the Collector with regard to that estate could not be very heavy. So, all things considered, BABOO KRISTODAS PAL did not know whether it would be necessary to entertain a special officer as Deputy Commissioner of Wards' Estates in Behar. It struck him that when the Collectors in Bengal were not paid, and it was not proposed to pay them, out of wards' estates for the management of those estates, it would not be right and consistent to pay a special officer in Behar out of those estates for similar work.

The hon'ble member in charge of the Bill proposed a new provision for the consideration of the Select Committee, namely, the advance of money from the funds of one ward's estate to another on mortgage. This was a very important provision, and involved many knotty points, and he hoped the Legislature would weigh well the proposition before it gave assent to it. Ordinarily a mortgage not unfrequently led to litigation, and when a proprietor acted on his own discretion he took upon himself the consequences of his own act. But the Court of Wards had only a fiduciary interest in the estate, and BABOO KRISTODAS PAL did not think it would be right and proper if the Court lent money on a

security which might thereafter lead to dispute, litigation, and perhaps loss. This point, he believed, was considered by the Government not long ago, and so far as he was aware, the landed interest were not in favour of the innovation proposed.

He had one suggestion to make with reference to this Bill. Hon'ble members were aware that under a recent resolution of the Government the funds of wards' estates were applicable to the improvement of those estates. But there was no limit as to the amount which might be so laid out. He believed the Government had assigned a limit of from three to five per cent. to outlay from the revenues of khas mehals for improvements. Following that principle, he would recommend that a percentage should be fixed for the outlay of funds from wards' estates for improvements. Otherwise the discretion which was now left to the manager and the Collector might be, and was, he was informed, sometimes abused, and a ward when he attained majority might find his estate considerably hampered for the execution and maintenance of improvements which might not all be needed.

The HON'BLE MR. SCHALCH said, with reference to the observations which had been made by his hon'ble friend (Baboo Kristodas Pal), he might say that most of them related to matters which would come up before the Select Committee, of which he hoped the hon'ble member would be one, and where they would have full opportunity for discussion.

The motion was agreed to, and the Bill was referred to a Select Committee consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Bell, the Hon'ble Baboo Kristodas Pal, and the mover, with instructions to report in one month.

ABKAREE REVENUE.

THE HON'BLE MR. REYNOLDS said that in moving that the Bill to consolidate the law relating to the abkaree revenue in the Presidency of Fort William in Bengal be read in Council, there was one preliminary point which it was perhaps convenient he should mention. By the rules which governed the legislation of this Council, any measure which affected the abkaree revenue required the previous sanction of the Government of India. Accordingly the draft of this Bill was submitted to the Government of India in September for that purpose. No direct reply had been received to that communication. But he found, on referring to the former papers, that this proposal for consolidating the law relating to abkaree was originally suggested by the Government of India itself in a letter dated the 10th of April 1875, at the time when the amendment of the abkaree laws was under consideration last year. In the 4th paragraph of that letter it was stated that—

"In the opinion of His Excellency the Governor-General it is most desirable that the law upon a subject in which the public are largely interested should be clearly arranged, and that accordingly, either on the present occasion or after the amendments of the existing law which are proposed in this Bill have been made, the Acts relating to abkaree in the Lower Provinces should be consolidated."

He believed hon'ble members would agree with him that as this measure had been suggested by the Government of India, and as it was a purely

consolidating Bill, it was not necessary that any separate and special sanction should be accorded before the Council was authorized to have this Bill read in Council.

With regard to the measure itself which was before the Council, he should not have to detain members with many remarks, as the Bill was, as he observed when he applied for leave to introduce it, entirely a consolidating measure. No material alteration of the law had been attempted, and the Government was not aware that any considerable alteration of the law was necessary or desirable. The amendment of the abkaree law was very fully discussed last year when the Bill which had subsequently become Act II of 1876 of this Council was under consideration, and the present measure simply proposed to consolidate the existing law, including that Act. The second chapter of the Bill before the Council was mainly founded upon the former Act XI of 1849, and related to the abkaree administration of the town of Calcutta. The third chapter of the Bill in the same way was mainly founded upon Act XXI of 1856, and related to the abkaree administration in the mofussil. The fourth chapter applied to all the territories under the Government of Bengal, including Calcutta.

He thought there were only two sections of the Bill to which he need specially ask the attention of the Council, and both of them were mentioned in the statement of objects and reasons. The first of these was section 18, in regard to which it would be observed that by Act XI of 1849 the penalty prescribed for the possession of contraband opium was Rs. 16 per seer. Now that penalty appeared to have been fixed with reference to the selling price of opium at that time. The selling price now having been considerably raised in pursuance of the policy to put all legitimate restrictions upon the consumption of the drug, the price of opium now was from Rs. 16 to Rs. 27 per seer in the various districts. It was clearly desirable that the law should be altered so as to allow the fine to be fixed at a rate so as not to exceed the selling price of opium in the districts in question.

The other section was section 131. Here we had to deal with what appeared to have been an oversight in the passing of Act II of 1876. By the former law, both Acts XI of 1849 and XXI of 1856, a reward was authorized to be given partly to the informer by whose agency the offender was brought to justice, and partly to the person who actually apprehended the offender. The amount of the reward might be Re. 1-8 per seer of opium confiscated to the informer and the same to the apprehender. But in passing Act II of 1876, apparently by some oversight, the total sum of Re. 1-8 per seer was authorized to be given to both the informer and the apprehender. It was now proposed to re-introduce the former law. A communication had been received from the Board of Revenue, calling attention to the fact that the total sum of Re. 1-8 was too small to supply a sufficient inducement for the detection and punishment of offenders.

With these remarks he had to move that the Bill be read in Council.

The Hon'ble Baboo Kristodas Pal said he had only one remark to make in connection with this Bill. In 1875 a correspondence took place

between the British Indian Association and the Bengal Government regarding the Abkaree Bill then before the Council. The Association brought to the notice of the Government the advantage of giving municipalities the power of issuing licenses for the sale of spirituous liquors and intoxicating drugs, and the British Indian Association was informed by the Government that the question was beyond the scope and object of the Bill then before the Council, but that the matter was one which might properly be considered in connection with the consolidated Bill on the abkaree laws which it was proposed to introduce hereafter. In conclusion, it was stated that the proposal would be borne in mind and receive the best consideration of the Government. Now that a Bill had been introduced for the consolidation of the abkaree laws, he hoped this matter would receive the attention of the Select Committee.

The Hon'ble Mr. Reynolds said, although that reply had been sent in the first instance, the matter was afterwards reconsidered, and the provision of law referred to was embodied in section 15 of Act II of 1876, and was now reproduced as section 130 of the present Bill.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Baboo Kristodas Pal, and the mover, with instructions to report in one month.

The Council was adjourned to a day of which notice would be given.

Saturday, the 25th November 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVI MEER MAHOMED ALI,
and
The Hon'ble G. PARBURY.

NEW MEMBER.

THE HON'BLE MR. PARBURY took his seat in Council.

PUBLIC FERRIES.

THE HON'BLE MR. BELL moved that the Bill to amend the law relating to public ferries be read in Council. In the statement which he had the honor to make last Saturday, he explained to the Council what the object of this Bill was. Its object was simply to enable the Government to transfer to the District Road Cess Committees the ferries which were situated on roads which were maintained out of local funds. In the Mofussil Municipal Bill, which was passed by this Council last session, it was provided that all ferries which were situated within the limits of municipalities might be made over to the control of the municipal bodies within the limits of whose jurisdiction they were situated, and the present Bill merely provided that certain public ferries might similarly be made over to District Road Cess Committees. At present there was this anomaly with regard to such ferries, that the District Committees enjoyed the surplus proceeds arising from them, while the management remained in the hands of the Magistrate of the district, where it was placed by the Regulation of 1819. The simple object of the Bill was to transfer to the District Committees the management of the ferries which were situated on roads which they maintained from contributions which were levied within their districts under the provisions of the Road Cess Act.

In drafting this Bill he had taken as his model the provisions relating to ferries which were contained in the Mofussil Municipal Act, because the provisions which were applicable to municipalities were equally applicable, *mutatis mutandis*, to District Road Cess Committees; and he thought it was desirable to frame the Bill as much as possible on the model of an Act which had so recently received the sanction and approval of the Council. The Bill was an exceedingly simple one, and he thought that without any further comment he might ask that the Bill be read in Council.

The HON'BLE BABOO ISSER CHUNDER MITTER said he had only one suggestion to make, and that was whether the present opportunity should not be taken advantage of to recast the old Regulation of 1819 on the model of the Bill which had now been framed. That regulation, so far of course as it related to Bengal, contained many rules and details which could not now well stand in the Statute Book; and there was an amending Act I of 1866 of the Bengal Council which modified some of its provisions. He thought, therefore, that the present opportunity should be taken to remodel the whole existing law relating to ferries.

The HON'BLE BABOO KRISTODAS PAL said there was one point in connection with this Bill which he wished to notice. In looking into the Bill he did not see in it any provision for giving compensation to the lessees of ferries which might be taken over by District Committees, or which might be injuriously affected by public ferries. He was of opinion that such a provision would be equitable.

The HON'BLE MR. BELL said, with regard to the observations which had fallen from the hon'ble member opposite (Baboo Kristodas Pal), the reason why the Bill made no provision for granting compensation to the owners of private ferries was simply because the Bill gave Local Committees no power to take over private ferries. But he agreed with the hon'ble member that some provision should be made for taking over private ferries, and in that case compensation would of course be given to the lessees of ferries so taken over. Provision was made in the Mofussil Municipal Act for that object, and he thought that they should make a similar provision in this Bill also.

With regard to the suggestion which had been made by the hon'ble member to the right (Baboo Isser Chunder Mitter), Mr. BELL could at present give him no definite reply. The Bill had been introduced into Council for a particular purpose; but if, when they came to consider the question in Select Committee, they found they could without much difficulty recast the regulation relating to public ferries, it would then be a question whether they should obtain permission to enlarge the scope of the Bill. At present he merely asked that the Bill might be read in Council, and the suggestion which had been made by the hon'ble member could be more fully considered in Select Committee.

The motion was agreed to, and the Bill was referred to a Select Committee consisting of the Hon'ble Baboo Ram Shunker Sen, the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Nawab Ashgar Ali, and the mover, with instructions to report in one month.

GHATWALI POLICE.

THE HON'BLE MR. BELL moved that the Bill for the regulation of the ghatwali police in the districts of Bankoora and Manbhoom be read in Council. In the statement which he had the honor to make a fortnight ago in this chamber, he had attempted to explain the origin of these ghatwali tenures and the difficulties which had rendered necessary the present legislation. He did not intend on the present occasion to go over the ground which he had then trod, more

particularly as the papers which had been circulated with the Bill would give hon'ble members every needful information. But there were one or two points in connection with those papers to which he should wish very briefly to advert. Among them would be found a memorandum by Mr. Macaulay, who was formerly the District Superintendent of Police in Bankoora, and also a petition from Messrs. Erskine & Co., who were large zemindars in that district. These gentlemen had both stated their opinion that it was perfectly useless to attempt to utilize these ghatwals as a police force. Now, no doubt the opinion of those gentlemen was entitled to very great weight, and he thought it could not be denied that the ghatwals as a body had not hitherto been a very efficient or a very satisfactory body of police; but he could not help thinking that a great deal of this inefficiency might be owing to the circumstance that the duties of these ghatwals as police-officers had never been distinctly determined or defined. Whenever an order was issued by the Magistrate it was open to the ghatwals to dispute the legality of the order, and the civil court was then invoked to determine whether the service which the Magistrate had called upon the ghatwal to render was a service which by custom was attached to the tenure or not. So long as such uncertainty existed with regard to the ghatwals' duties, it was perfectly impossible that there could be any useful or satisfactory service. The Bill which was now submitted to the Council would determine and define the duties which these ghatwals were in future to render; and he hoped that when the ghatwals knew the exact duties expected of them, and the Magistrate knew the exact duties which he might call upon them to perform, the efficiency of the body would be greatly improved. At any rate, MR. BELL did not think that they ought to abandon the task as hopeless until they had attempted to improve the efficiency of the ghatwals by clearly defining their duties and making provision for the enforcement of the performance of those duties.

There was another point in Mr. Macaulay's memorandum to which he thought it necessary to allude for a few moments. Mr. Macaulay had submitted a scheme for commuting the services of the ghatwals. This, however, was a question which was beyond the scope of the present Bill. His Honor the Lieutenant-Governor had visited Bankoora in August last, and after fully considering the question in consultation with the local officers, he had arrived at the conclusion that it would not be expedient at present to attempt any arrangement of the sort, and MR. BELL thought the Council would fully agree in that conclusion when they reflected that at present the area, the extent, and the boundaries of these lands were absolutely undefined, and that no proper or correct survey of these lands had been made. It was obvious that no scheme of commutation could possibly take place so long as these elements of uncertainty existed. The Bill provided that it should be lawful for the Government to order a survey of the ghatwali lands, and when such a survey had been completed, and we knew exactly what were the extent and the boundaries and the value of those lands, it would then be time enough to take into consideration the question of commutation. In the Bill which was now laid before the Council, and which had been drafted on the lines of the Bill submitted by the

Magistrate of Bankoora, there were two sections—sections 20 and 21—which had crept into the Bill through inadvertence. These sections related to the question of commutation, into which it was not for the present proposed to enter.

There was only one other point to which he wished to allude. In the petition submitted by Messrs. Erskine & Co., who were, as he said before, zemindars of Bankoora, complaint was made that the ghatwals were very remiss in paying their quit-rents. At present the ghatwals who resided within the pergunnah of Bissenpore paid their quit-rent to the Collector, and the Collector credited the zemindar with the amount of the quit-rent in his revenue account; but in other parts of the district, where Messrs. Erskine & Co. held their property, no such arrangement had been made. They had to pay their revenue into the Collectorate whether they collected the quit-rent from these ghatwals or not. The difficulty the zemindar experienced was this. The ghatwal had only a personal interest in his tenure, and the consequence was that the zemindar was unable to sell the tenure for arrears of rent. His only remedy was to proceed against the personal effects of the ghatwal; and to refer the zemindar to the personal effects of the ghatwal was in many cases absolutely delusive. He therefore thought that the Council should provide some easy means by which the zemindars should be able to realize their rents from the ghatwals. The Magistrate, to whom MR. BELL had sent the petition of the zemindars, proposed that the arrangement which existed in the pergunnah of Bissenpore should also be introduced into the other parts of the district; and if that arrangement were adopted, the ghatwals would pay their rents to the Collector, and he would then credit the zemindar with the amount of the rent in the revenue account. That arrangement would save the zemindars from the expense and trouble of collection, and it seemed to be a perfectly fair and proper arrangement.

With these remarks he begged to move that the Bill be read in Council.

The HON'BLE BABOO KRISTODAS PAL said it was not his intention to discuss the many important points involved in this Bill: they were questions which would be best considered in Select Committee. But there was one important principle involved in the interpretation clause, regarding the hereditary rights enjoyed by ghatwals, to which he thought it necessary to draw attention. It was stated in clause (vi) of section 2 that in case of dispute regarding the hereditary possession of a ghatwal, it should be presumed that possession had been uninterrupted from the time of the permanent settlement unless the contrary was proved, and that "hereditary ghatwal" meant a ghatwal some member of whose family had been from the time of the permanent settlement in uninterrupted possession of the same service tenure, and who had performed police service for the same. Now it might be, as BABOO KRISTODAS PAL was informed, that in many cases uninterrupted possession could be proved. But there might be cases in which it might be difficult to prove such possession, but only possession for a number of years. Now, under Act X of 1859 and the Limitation Act, uninterrupted possession for twelve years without payment of rent gave a right of exemption from payment of rent. That constituted a lakhiraj title; and he did not see why the principle of law which applied to ryots holding lands from zemindars should not be applicable to ghatwals who held

their lands on condition of service to Government. The condition of service was of course to be enforced; but the fact that possession of the tenure had been held for a certain term of years would, according to the present law, give a prescriptive right, and he thought that the same principle ought to be adopted in respect of ghatwali tenures. He hoped the Select Committee would be good enough to take this point into their consideration.

One other point which the hon'ble mover had noticed, and which called for remark, was the means which the zemindar possessed of recovering the quit-rent from the holders of ghatwali tenures. He fully admitted, as the hon'ble member had observed, that the personal effects of a ghatwali ryot might not in many cases be sufficient to meet the rent. But as it was a question of the recovery of rent, and that question embraced the whole body of zemindars and did not affect only one class of zemindars in one part of a district, BABOO KRISTODAS PAL thought that such an important question ought to be decided upon broad general grounds. If the personal effects of a ghatwal were not sufficient to satisfy the quit-rent payable to the zemindar, the quit-rent being generally very small, it was much more difficult for a zemindar to recover his ordinary rent; and therefore whatever law the Council might think fit to pass ought to be applicable to all ryots, and not to one section of them only.

The HON'BLE MR. BELL said he would only make one or two observations in reply to the remarks which had fallen from the hon'ble member opposite (Baboo Kristodas Pal). The circumstances of hereditary ghatwals were entirely different from the circumstances of ordinary ryots. If he understood the facts rightly, the names of all ghatwals were entered in a public register kept in the Magistrate's office, and the Magistrate had merely to refer to this register to know exactly the date from which the family commenced their holding. Therefore, the reasons which had induced the Legislature to lay down a rule of prescription with reference to ryots would hardly apply to the case of ghatwals. The records of the Bankoora office went as far back, he believed, as the year 1807, and he should be quite willing to agree with the hon'ble member that if any ghatwal could show from the records that he and his family had been in possession from that date they should be considered to have a quasi-hereditary title. MR. BELL proposed to leave that question to be finally decided by the Select Committee. He hoped the Committee would have the advantage of the presence of the Magistrate of Bankoora in settling the details of the Bill, and therefore he thought he might postpone the consideration of that question until then.

With regard to the observations which had been made with reference to the realization of the quit-rent, MR. BELL thought the circumstances of the ghatwals with reference to the landlord were somewhat different to the circumstances of the ordinary ryot with respect to his landlord. The ghatwal had two masters—first, the landlord, and secondly, the Magistrate. If the rent was not paid, the zemindar was unable to sell the tenure. Now an ordinary zemindar, if his rent was not paid, could realize the arrears by the sale of the tenure itself. But the zemindar, in the case of the ghatwal, had not that facility. Therefore MR. BELL thought that if the Council could provide some means for enabling the zemindars

justly and fairly to recover their rents, they ought to do so; and if the arrangement which was suggested by the Magistrate were adopted, there would be no difficulty. The zemindars would be relieved of the necessity of collecting the rent from the ghatwals, and without any trouble on their part they would be credited with the amount of rent paid by the ghatwals in their revenue account, and that, as observed to MR. BELL by the learned Advocate-General, was the principle of the Beerbhoom regulations. MR. BELL thought, therefore, that if the Select Committee adopted the suggestion of the Magistrate, the difficulty which had been represented by the zemindars would be very satisfactorily met.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Baboo Ramshunker Sen, the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Baboo Kristodas Pal, the Hon'ble Moulvie Meer Mahomed Ali, and the mover, with instructions to report in two months.

The Council was adjourned to a day of which notice would be given.

Saturday, the 9th December 1876.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble V. H. SCHALCH, C.S.I.,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble H. BELL,
The Hon'ble BABOO RAMSHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL,
The Hon'ble NAWAB SYUD ASHGHAR ALI DILER JUNG, C.S.I.,
The Hon'ble MOULVIE MEER MAHOMED ALI,
The Hon'ble G. PARBURY,
and
The Hon'ble H. F. BROWN.

NEW MEMBER.

The Hon'ble MR. BROWN took his seat in Council.

MARKET-DUES AND RIVER TOLLS—POLICE AND CONSERVANCY AT FAIRS.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to declare illegal the collection of dues, tolls, or taxes in certain gunges and markets, and from boats in navigable rivers, and to provide for the maintenance of police in, and the conservancy of, public fairs. He said he did not propose to ask the Council to go farther back than the statement made by His Honor the President just two years ago in this chamber with reference to this measure. It was true

that the question had been under discussion and deliberation for some time previously: information had been called for from Commissioners of Divisions, a resolution was issued by the Government of Bengal, and the necessity for legislation on the subject had been pressed upon the notice of the Government of India. But the statement which was made by His Honor on the 19th December 1874 was, he believed, the first occasion upon which the matter was distinctly brought to the notice of the Legislature. But though he did not propose to go into any details of an earlier date than that, a reference to the papers would be sufficient to show that the measure was not now brought forward without full inquiry and deliberation. The question had been more or less under discussion since January 1872, when Sir George Campbell issued a circular on the subject; and during the two years which had passed since the matter was brought to the notice of the Council, further inquiries had been made, more information had been collected, and the limits within which it was necessary to legislate had been maturely considered; and the result had been that the measure which it was now proposed to bring forward was more limited in its scope and character than at first was thought to be required.

It was within the knowledge of the Council that the levy of sayer duties was prohibited by Regulation XXVII of 1793; and though that Regulation was repealed by Act XXIX of 1871, yet the repeal of the Regulation did not make the levy of these duties any more legal than it was before. The effect of the repeal was merely to take away the power to punish those who levied the duties, but the illegality of levying these duties remained. But it was a fact well known to every one who had any acquaintance with the state of things in the mofussil that the levy of these duties was still very common indeed. Sometimes they were levied under circumstances which might be fairly justified; sometimes they were levied under circumstances which were altogether without justification or excuse; sometimes they were nothing more than an equivalent for rent; but in other cases they operated as a restriction upon trade and upon the free interchange of commodities between one part of the country and another. No doubt in dealing with a question of this kind it was a matter of considerable difficulty to steer the right course between two extremes: on the one hand to avoid anything like interference with the legitimate exercise of rights of property, and on the other hand, to protect the just interests and privileges of the general public. This was a matter which had been very carefully considered in framing the Bill; and if he obtained leave to introduce it, he was sanguine it would be found that the difficulty had been overcome, and that the measure carefully avoided any invasion of proprietary rights.

As on this occasion he was only asking leave to introduce this Bill, he did not propose to go into more detail than to state generally that the Bill attempted to deal with three main questions: first, the levy of market dues in towns; secondly, the levy of tolls and mooring dues on navigable rivers; and thirdly, police and conservancy in large periodical fairs. It was not proposed that village hâts and markets should be brought within the scope of the Bill. Such markets were generally held on land the property of the zemindar, who had a right to demand rent either in money or in kind.

Some isolated cases might occur in which these demands were unreasonably framed or improperly enforced, but it was believed that such cases were not common; and if such cases did happen, the people, both buyers and sellers, had the remedy in their own hands by resorting to some other market. But the case of markets in towns seemed to be upon a somewhat different footing. These were cases in which the people were comparatively helpless, the market being a necessity of their daily life, and they could not go elsewhere. It was therefore proposed to enact by this measure that no dues should be levied in these markets except the rents which were recognized as legal by the Regulation of 1793.

Next with regard to tolls and mooring-dues on navigable rivers. Information which had been laid before the Government showed that the levy of these dues very frequently operated as a restriction on trade, and as an obstacle to the commercial and agricultural prosperity of the country. In a communication which had been received from the Government of India, the principle had been distinctly laid down that the general public had a right not only to the free use of navigable rivers, but also to the free use of their banks for the purposes of mooring, towing, punting, and other purposes incidental to the right of navigation. It was proposed by the Bill to maintain the public in the exercise of these rights, but to do so without any invasion of the title of the riparian owners.

Lastly, with regard to conservancy and police arrangements at large periodical fairs, for example, such fairs as the Baroree Fair at Moonsheegunge in Dacca, and the Nekmurd Fair in Dinagepore. At fairs of this kind it was found necessary that special arrangements should be made for police and conservancy with the object of maintaining order and preventing outbreaks of disease among a large aggregation of people. It appeared reasonable that the expense of these special arrangements should fall not upon the State, that was to say on the general tax-payer, but on the persons who benefited by these fairs, whether they were owners of the land or those who disposed of their goods or who resorted to these fairs as purchasers. These were the persons upon whom it seemed fair that the cost of these sanitary and protective arrangements should fall, and it was proposed to provide a procedure for levying the cost of these arrangements from them. The Bill was still in the hands of the drafter, but it was nearly ready for circulation, and if leave were given, MR. REYNOLDS hoped to be able to lay the Bill before the Council on an early date.

The motion was agreed to.

JUTE WAREHOUSES AND FIRE-BRIGADES.

THE HON'BLE MR. BELL moved for leave to introduce a Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and Bengal Act II of 1875. He said the Bill which he had now the honor to ask the permission of the Council to introduce was one of a very simple nature, and would not very seriously tax the patience of the Council. Its object was merely to introduce certain formal amendments into two Acts of this Council which were passed in 1872 and 1875 regarding jute warehouses and fire-brigades. By those Acts the control of jute warehouses

within the limits of the Municipality of Calcutta was vested in the Justices of the Peace for the Town of Calcutta. At that time the Justices of the Peace for the Town of Calcutta were a corporate body, and were entrusted with the municipal control of the town; but, as the Council was aware, an Act was passed last session which deprived the Justices of the Peace for the Town of Calcutta of their corporate capacity, and transferred the administration of the affairs of the Town of Calcutta to the new body constituted by that Act. But when the Municipal Act was passed, no provision was made for taking over the duties under the Jute Warehouse and Fire-brigade Acts of 1872 and 1875. The matter, therefore, at present stood in this way. Those Acts vested the control of jute warehouses in the Justices of the Peace for the Town of Calcutta in their corporate capacity; but the Justices for the Town of Calcutta had ceased to exist as a corporate body, and it was therefore necessary now to provide that the duties which the Justices in their corporate capacity performed with regard to jute warehouses should be transferred to the new body which was substituted for them by the recent Municipal Act: and therefore the simple object of the Bill was to transfer to the present Municipal Commissioners of Calcutta the duties formerly performed by the Justices of the Peace.

The motion was agreed to.

The Council was adjourned to Saturday, the 16th instant.

Saturday, the 16th December 1876.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble V. H. Schalch, C.S.I.,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Ramshunker Sen, Rai Bahadoor,
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal,
The Hon'ble Nawab Syud Ashghar Ali Diler Jung, C.S.I.,
The Hon'ble Moulvie Meer Mahomed Ali,
The Hon'ble H. F. Brown,
and
The Hon'ble G. Parbury

JUTE WAREHOUSES AND FIRE-BRIGADES.

The Hon'ble Mr. Bell moved that the Bill to amend the Jute Warehouse and Fire-brigade Act, 1872, and Bengal Act II of 1875, be read in Council. He had explained to the Council last Saturday the object of this Bill, which was merely to transfer to the present Municipal Commissioners for the Town of Calcutta the duties which, under the Jute Warehouse Acts of 1872

and 1875, had been performed by the Justices of the Peace. This transfer was rendered necessary because the Justices of the Peace for the Town of Calcutta had ceased to exist as a corporate body, and it was necessary that their successors, the present Municipal Commissioners, should now undertake the duties which their predecessors, the Justices, had formerly performed. The Bill was merely a formal one, and he did not think that it called for any further remarks from him.

The motion was agreed to.

The HON'BLE MR. BELL applied to the President to suspend the Rules for the conduct of business, to enable him to move that the Bill be passed.

HIS HONOR THE PRESIDENT having suspended the Rules,—

The HON'BLE MR. BELL, in moving that the Bill be passed, observed that he did not think there would be any objection to the passing of a Bill which was so merely formal. It was very necessary that the Bill should be passed at once, because there was no one at present responsible for the duties which had been imposed upon the Justices of the Peace by the Jute Warehouse and Fire-brigade Acts, and it was therefore very desirable that the Bill should be passed without any unnecessary delay.

The motion was agreed to and the Bill was then passed.

PUBLIC FERRIES.

THE HON'BLE MR. BELL said that before the Council adjourned he would ask permission to mention one subject. On the 20th November last a committee was appointed to consider the Bill to amend the law relating to public ferries, and the committee was instructed to report within one month. In consequence of the approaching holidays, the committee would be unable to present their report within the time appointed, and he would therefore ask that an additional month be granted to the committee.

The motion was agreed to.

ADJUSTMENT OF RENTS.

HIS HONOR THE PRESIDENT was sorry to state that they had not yet been able to introduce the Rent Bill. The Bill had been drafted, but they had not yet received the requisite assent to its introduction from the Secretary of State; but in the meantime the Bill, which had been prepared, had been submitted for consideration to the best informed local authorities.

The Council was adjourned to a day of which notice would be given.